ELECTRICAL POWER SYSTEMS

SECTOR INQUIRY REPORT

January 31, 1978

S. R. ELLIS

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TABLE OF CONTENTS

PREFACE

Chapter

ONE INTRODUCTION

Focus and Scope of the Inquiry C.1-1

The Obvious Factors C.1-7

TWO ONTARIO HYDRO'S CONSTRUCTION PROGRAM

The Present Program C.2-1

The Future Program C.2-8

Comparison with the Industrial, Commercial and Institutional Sector C.2-9

Ontario Hydro as a Construction Industry Customer C.2-10

Ontario Hydro as an Employee of Construction Workers C.2-14

THREE EPS SECTOR PRESENT BARGAINING STRUCTURE C.3-1

FOUR ANALYSIS OF THE PROBLEM

Problems with the Present Arrangements C.4-1

Impact on ICI Bargaining C.4-1

Overlapping Collective Agreements C.4-13

Ontario Hydro's Dominant Role in EPSCA C.4-19

Conflicting Side-by-Side Agreements C.4-25

Table of Contents (cont'd.)

Chapter

FOUR (cont'd.) The Problems with Incorporating the Major Power Projects into the ICI Sector C.4-26

The Implications of the Multi-Sector Nature of Major Power Project Work C.4-27

Potential Loss of the Favourable EPSCA Working Terms and Conditions C.4-29

Ontario Hydro as Participant in the ICI Sector Bargaining C.4-36

FIVE THE RECOMMENDATION

Major Premises C.5-1

Proposal C.5-5

Need for Two Separate Sectors C.5-5

Definition of Public Power Sector C.5-5

Bargaining Structure C.5-8

Joint Negotiations C.5-15

Agreements Affecting the Public Power Sector C.5-16

Common Expiry Dates with the ICI Sector C.5-17

Ratification Voting Procedure C.5-17

Public Power Contractors Council - Vote Weighting in Favour of Trade Bargaining Agent Member C.5-22

Resolution of Inter-Sector Questions C.5-23

Financing of the PPC Council C.5-25

Integration of ICI Sector and Public Power Sector Negotiations C.5-27

Administration of Collective Agreements in the Public Power Sector C.5-28

Table of Contents (cont'd.)

Chapter

SIX TRANSITIONAL ARRANGEMENTS

Timing C.6-1

Extension of Existing Agreements C.6-2

Creation of the Public Power Contractors Council C.6-5

APPENDICES

A - Appointment

B - Conduct of Inquiry

C - Major Power Projects - 1977 Man-hour Analysis

D - Explanation of Differences Between ICI and EPSCA Terms and Conditions

E - Consolidated Long Range Program Bar Chart

PREFACE

1. This is the report of the Industrial Inquiry Commission established by the Minister of Labour pursuant to section 34(1) of The Labour Relations Act to inquire into report upon and make recommendations to the Minister concerning the extension or application of Bill 22[1] to the Electrical Power Systems Sector of the Construction Industry. The Commission was established effective October 31, 1977 and was requested to complete the Inquiry and make its report not later than January 31, 1978. A copy of the terms of reference is attached as Appendix "A".

2. The procedure followed in pursuing the Inquiry - the meetings that I held, the people to whom I talked, the briefs received, the material read, etc. - will be found described in Appendix "B".

3. This Inquiry has been completed and the report and recommendations written within the three-month time limit requested by the Minister at the time the Commission was established. During my meetings with various

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1. Footnotes will be found at the back of each Chapter and on page 3 of this Preface.

representatives of the industry I encountered occasional expressions of concern as to the possibility that the time provided for the inquiry might be insufficient. It is important therefore for that question to be addressed here at the outset of my report. It goes without saying that the inquiry and the report were completed under considerable time pressure. That this would be a factor was recognized from the outset, but the importance of reporting in time to permit such action as the government might think appropriate relative to the Electrical Power Systems Sector bargaining structure before the commencement of the industrial, commercial and institutional sector province-wide bargaining in the spring of 1978 was acknowledged on all sides. The three-month time limit was necessary to meet those requirements. Having now finished the process, I am satisfied that the time was sufficient. The report itself has been written in rather more haste than I would have liked and as a result it is likely to suffer from more than the usual allotment of minor errors and omissions. It is also much longer than it might have been had the time been available for more disciplined writing. I am satisfied however that the inquiry

itself was sufficiently complete; that I was able to develop a sufficient understanding of the nature of the problem and that the substance of the report and recommendations would not have benefitted substantially had more time been available.

FOOTNOTES

1. Bill 22 entitled, An Act to amend The Labour Relations Act, was introduced in the 1st Session, 31st Legislature, Ontario 26 Elizabeth II, 1977, and received 3rd reading as amended on October 25, 1977. The Bill introduced Province-wide, trade-by-trade bargaining in the ICI Sector of the construction industry.

CHAPTER ONE

INTRODUCTION

Focus and Scope of the Inquiry

1. I propose to begin by clarifying the focus and scope of the Commission's inquiry. It is apparent first of all that the concerns and questions which led to the appointment of this Commission were not primarily about labour relations in the Electrical Power Systems Sector per se. The concerns and questions were primarily about the relationship between the labour relations activities in the Electrical Power Systems Sector and the labour relations activities in the Industrial, Commercial and Institutional Sector. (I will normally refer to the two sectors as the "EPS Sector" and the "ICI Sector" respectively). Naturally, however, the relationship is dependent upon the nature of the bargaining structures in each of the two sectors and, accordingly, my terms of reference encompass both the relationship between the two sectors and the bargaining structure in each. I have, however, taken the bargaining structure in the ICI Sector as defined by Bill 22 to be a given factor, not itself within my terms of reference as far as recommendations are concerned.

2. The second point to be made is that labour relations in sectors specified in The Labour Relations Act other than the ICI Sector, such as the Sewers and Water Mains Sector, the Roads Sector, etc., have not figured largely in the inquiry as they do not appear to have been significantly affected by the EPS Sector. It is apparent, however, that the existence of these other sectors is of considerable significance from the point of view of <u>their</u> impact on the bargaining structure in the EPS Sector. They cannot be ignored when considering the EPS Sector bargaining structure because from the point of view of work characteristics, the major Ontario Hydro projects, which are the most significant aspect of the EPS Sector, are in fact multi-sector projects.

3. The third necessary observation by way of clarification of this Commission's focus is that the term "Electrical Power Systems Sector" is not an adequate description of the area of construction activity which is the centre of the concerns which prompted the establishment of the Commission. The Ontario Labour Relations Act does not

define the Electrical Power Systems Sector. The Act simply assumes the existence of a special division of the construction industry called the Electrical Power Systems Sector, the content and limits of which are determinable by "work characteristics".[1] And the difficulty is that there are no discernable "work characteristics" capable of determining the scope of the Electrical Power Systems Sector in a manner that would reflect the construction industry's actual understanding of the sector.[2]

4. The construction industry, or at least those construction industry participants who are most concerned about the issues of interest to this Inquiry, in fact understands the Electrical Power Systems Sector to be primarily an euphemism for Ontario Hydro's capital construction program - both the construction of long distance high voltage transmission lines and transformation stations, and the construction of major power generation projects such as the Pickering Nuclear Power Generating Project and the Bruce Nuclear Power Development Project. But any reasonable interpretation of the words themselves will also encompass the construction of municipal, low voltage, distribution lines and related facilities (not constructed by Ontario Hydro except occasionally

under special contract from the municipality) and the construction of privately-owned, generation and transmission facilities. Nevertheless, the labour relations issues which the separate existence of the EPS Sector vis-à-vis the ICI Sector has raised, do not relate to these municipal or private segments of the EPS Sector. Accordingly, I have considered these latter segments of the sector only from the point of view of how they might be affected by my recommendations for solving the Ontario Hydro-ICI problem.

5. In this report, therefore, when I refer to the EPS Sector, unless I indicate to the contrary I am to be taken as referring only to the Ontario Hydro-construction-program aspect of the Sector, by which I mean Ontario Hydro's major power generation projects (which I will refer to as "major power projects") and the construction of Ontario Hydro long-distance, high-voltage, transmission lines and transformation stations (which I will refer to as "lines and stations projects") including, in each case, construction work done for Ontario Hydro by contractors as well as that done by Hydro itself.

6. It is also apparent, however, that even the lines and stations part of the sector is only marginally involved in the issues which the separate existence of the EPS Sector raises. Accordingly, what it finally comes down to is that the major focus of my inquiry has been,

(a) the bargaining structure for major power projects - both the present arrangements and possible alternatives, including some extension of the Bill 22 concepts;

(b) the impact of such structure and alternatives on the ICI Sector, and

(c) the desirability of applying Bill 22 directly to major power projects by making those projects part of the ICI Sector.

7. As might by now have been expected, the major power projects concept also requires a word of explanation. It includes not only projects at the stage where all construction is new construction, but also projects which have reached the stage of being wholly or partly "on-stream" and have become integrated into Ontario Hydro's operating facilities. While maintenance and restoration work on operating facilities is handled by Ontario Hydro's operating divisions and performed by workers employed by Ontario Hydro under its industrial-type agreement with CUPE and, generally speaking, is not considered by the construction industry to be part of its work or part of

the EPS Sector, major additions to operating facilities, major rehabilitation of operating facilities and construction of new facilities on operating sites are considered construction industry work and are treated as part of the sector.[3]

8. Thus when I refer to "major power projects" I am to be taken as including construction work on Ontario Hydro operating sites in respect of major additions, major rehabilitation work and new facilities, as well as construction work on new project sites.

9. Incidental commercial construction for Ontario Hydro that is not on a major power project site and is not directly related to the generation or transmission of power, such as the construction of Ontario Hydro's new head office in Toronto, is considered by all, including Ontario Hydro, to be part of the ICI Sector. It has therefore not figured in this Inquiry.

10. Finally, for the sake of completeness, it may be as well for me just to note that I have not considered that my terms of reference contemplated an evaluation of the information Ontario Hydro has provided me as to the probable size of its construction program. I appreciate that the proceedings of The Royal Commission on Electric

Power Planning may result in some changes in Ontario Hydro's present plans concerning future construction. But time and resources would have precluded any examination of the probabilities in that regard even if it had been thought otherwise appropriate. It seems safe, in any event, to believe that the conclusions of The Royal Commission on Electric Power Planning will not dispense with a continuing Ontario Hydro construction program of some substantial dimension over at least the next ten years.

11. So much for the focus and scope of the Inquiry. Let me now introduce the substance of the problem.

The Obvious Factors

12. There is no difficulty in identifying the fundamental sources of the problems affecting the relationship in labour relations matters between the ICI Sector and the major power projects. There are a number of fairly obvious factors of which any reasonable policy must take realistic account. I have thought it appropriate to include a brief description of each of these factors here in Chapter I, as they are an important contextual reference for what follows.

13. First and foremost of course is the extent to which the construction activities in the ICI Sector and in the major power projects overlap. Much of the construction work on the major power projects, while sometimes of a particularly sophisticated nature, is not in its essential aspects different from work done in the ICI Sector. ICI Sector projects and major power projects employ substantially the same trades, compete in the same labour markets for tradesmen, deal with the same unions and engage contractors active in both areas. The result of having two different bargaining structures establishing different collective agreements in the two areas, as viewed from the employees' perspective, is that many employees find themselves employed by the same contractor doing identical or similar work but working under different collective agreements depending on whether the work is located on an Ontario Hydro project or elsewhere. In other cases, because of the present mixture of bargaining relationships in the EPS Sector an employee may work on the major power project under the same agreement that he would find elsewhere but may find himself working side-by-side with a fellow member of the same union who is working under an agreement with substantially different terms or conditions. In both cases the agreements will be common as far

as wages and benefits are concerned, but will differ substantially in respect of such items as overtime premiums, shift premiums, coffee break arrangements, travelling allowances, board allowances, height pay, working hours, etc. The difficulties inherent in such irrational arrangements not only from the employees' point of view but also from the point of view of the unions who have to administer the agreements and justify the differences to their members and from the perspective of the contractors and Ontario Hydro itself who also have to administer the agreements and, in addition, manage the project in the light of them are obvious. The overlap is also seen by contractors as having an important negative impact on the contractors' bargaining position in the ICI Sector, the reasons for which I will explain in some detail later, and by some unions as creating special bargaining problems for them as well.

14. The overlap is not, however, the only important feature of the relationship between the ICI Sector and the EPS Sector. There are, as well, substantial differences between the two sectors which any change in the bargaining structures must also recognize.

15. After all is said and done, perhaps the most significant point of distinction is the fact that in the EPS Sector there is only one owner-client, who is single-handedly responsible for a construction program which over the next ten years will be worth in the order of ten billion dollars - a dollar volume that is likely to approximate almost half the dollar volume for the entire ICI Sector during the same period.[4] The ICI Sector is, of course, characterized by a multiplicity of owner-clients.

16. Furthermore, on most EPS Sector projects, that single owner-client, Ontario Hydro, is also a major contractor - very often the biggest employer of tradesmen on a particular project.[5] In fact, in terms of volume of construction work done with its own forces and the numbers of tradesmen employed year after year, Ontario Hydro is perhaps the most significant single construction contractor in the province.[6] The ICI Sector has no comparable experience with organizations playing the dual role of owner and contractor.

17. Ontario Hydro's role as owner and contractor in the EPS Sector is also heightened as a point of distinction between the two sectors from a labour relations perspective, by Hydro's status as a Crown Corporation. Ontario Hydro

is a major employer of construction tradesmen but it is not a private-enterprise construction company and that fact and its implications cannot be forgotten when considering the relationships between the two sectors and the possibility of merging them for labour relations purposes.

18. Another factor to be considered is that the separation between the major power projects and the rest of the construction industry for collective bargaining purposes has been an established fact for over 25 years.[7] This separate bargaining history has produced unique bargaining structures as well as separate bargaining institutions such as the Ontario Allied Construction Trades Council (which I will call the "Allied Trades Council") and its counterpart the Electrical Power Systems Contractors' Association ("EPSCA"). It has also produced collective agreements applicable to these projects which in certain non-monetary respects are significantly more favourable from a management perspective in the context of a major project than corresponding agreements in the ICI Sector.[8]

19. In terms of total cost, duration and manpower requirements, the major power projects are massive, as compared with all but exceptional projects in the ICI Sector. Furthermore, because the Province's requirements for new power supplies can be predicted within reasonable limits on a relatively long-term basis, the major power projects are susceptible to long-term planning and scheduling. Taken together, they therefore represent a predictable, continuing source of substantial construction employment that is not duplicated in the ICI Sector. In addition, they offer opportunities to individual construction tradesmen for long-term and stable employment that generally speaking is also not available in the ICI Sector.

20. Another important difference between the two sectors is the extent to which construction work in the EPS Sector is commonly characterized by integrated, multi-trade work forces. This is a significant feature of any major construction project which is not found to nearly the same extent in commercial or institutional type construction.[9] It is the reason why major projects are particularly sensitive to the lack of standardized terms in collective agreements pertaining to the various trades. With the inclusion of the major industrial projects in the ICI Sector under the provisions

of Bill 22 [10] it is a feature which will now become a more common aspect of the ICI Sector experience, but in the EPS Sector every project is faced with this problem and the priorities accorded to the attempts on the employers' side to move towards more common terms and conditions between trades may be expected to continue to be higher in the EPS Sector than in the ICI Sector.

21. There are two other factors which are always mentioned when the question of justifying the maintenance of the distinction between the ICI Sector and the EPS Sector are discussed but which I have come to believe are not as important as is sometimes thought. I propose to deal with them here in the Introduction because many readers of this report will be puzzled by their omission from my list of obvious factors and it is important to deal with them before getting down to the detailed analysis of the substantive problem. The factors to which I refer are,

(1) the proposition that Ontario Hydro's intrinsic concern with costs as compared with the ICI contractors' focus on profits gives Hydro greater motivation to minimize costs in the negotiation of a collective agreement as compared to contractors, and

(2) the particular sensitivity to strike or lockout activity which is claimed for EPS Sector projects, given the unusually large capital investments involved and the special importance of the projects to the Province's overall economy.

22. The usual argument with respect to the first factor is that because private contractors are concerned only with profits, the actual cost of labour is unimportant provided only that one's competitors enjoy no advantage in that respect. And since the collective bargaining structure in the construction industry normally ensures that all competing contractors operate under the same union agreements, it follows that it does not matter too much what is in those agreements. On the other hand, it is said, the bottom line for Ontario Hydro is the actual cost of power to the consumer, and, accordingly, one can expect that Ontario Hydro will be motivated to take a tougher stand on terms and conditions of labour agreements than are contractors. Obviously, there is some substance to that analysis, but I believe those who see it as particularly important ignore a number of factors. First of all, it is not true to say - at least it is no longer true to say - that contractors do not compete in the area of labour costs. It is true they do not often compete in this area of costs with other union contractors, but they do now

compete with a variety of alternative sources of construction services that are not covered by the construction industry labour agreements.[11]

23. Furthermore, the actual history of strike activity in the ICI Sector in recent years is difficult to reconcile with the proposition that contractors are really indifferent to the actual content of their agreements. If that proposition is correct, then what is it, one is entitled to ask, that prompts contractors to take such long strikes so often? I am also not sure but what the analysis may, as well, over-emphasize Ontario Hydro's preoccupation with the absolute cost of construction labour. As far as wages and benefits are concerned, Ontario Hydro historically has been content to pay the going rates for union labour in the Province. At least in recent years, it has never attempted to maintain a preferred position as far as the wage package is concerned. It has been successful, of course, in maintaining a preferred position insofar as the working terms and conditions of the collective agreements are concerned,[12] but whether that achievement is evidence of a firmer resolve is, I think, open to argument. It seems to me that a number of other factors may have been just as important in explaining Hydro's success in this area. The ICI contractors' relative

bargaining disadvantage because of the pre Bill 22 local bargaining structure in the ICI Sector is one;[13] the advantage Ontario Hydro has historically enjoyed in the bargaining of working conditions by reason of not having wage and benefit issues on its bargaining agenda is another, and the fact that many of the conditions in question are not of central importance to the operations of most ICI contractors and therefore have never been high on their list of bargaining priorities, is a third.

24. I do not mean by these observations to suggest any disparagement of Ontario Hydro's achievement in maintaining these preferred conditions on its projects. Its success in this respect is obviously the product of an imaginative, carefully-considered, competent and determined labour relations policy applied consistantly over a period of about 25 years, including a long strike in 1967. I merely say that the difference in the bargaining performance between Ontario Hydro and the ICI contractors in the area of working terms and conditions is not reasonably attributable only or even primarily to their different approach to the question of costs and does not indeed reflect any fundamental or inherent difference in their respective bargaining <u>potential</u>.

25. The importance always attributed to immunizing major power projects from the strike and lockout activities in the ICI Sector also seems to ignore a number of factors. And here I am talking about legal strike or lockout action occurring as part of the collective bargaining process. Illegal strikes or "wobbles" are something else and I will deal with those later. In the first place, it tends to be predicated on an assumed direct correlation between time lost on strikes and lockouts, and delay in the on-stream date of a new generation facility.[14] The reality surely is that projects of the size, complexity and duration of a major power project have a considerable degree of scheduling flexibility. Obviously, any strike is disruptive of a construction schedule, but schedules can be adjusted and those labor forces that continue to be available can be redirected, at least for a time. Furthermore, after a strike is over, schedules can be accelerated and the lost time and disruption made up. Managers of major construction projects deal regularly with serious scheduling problems. Key pieces of equipment or essential materials are commonly delayed for any number of reasons including, of course, industrial strike action somewhere in the supply line, and not infrequently design problems are encountered and

construction drawings delayed. Labour shortages are another typical scheduling problem for a major project, particularly in a full-economy setting. I am not persuaded, therefore, that the cost of a legal strike or lockout affecting a major power project would in reality be found to be of an extraordinary character as compared with the general experience with the cost of strike and lockout activity in other areas of the economy. I have to concede, of course, that this conclusion is to a great extent a matter of speculation on my part but so too, it must be conceded, is the more traditional view on the part of its proponents.

26. The concern in this area also seems to ignore the fact that under the present separate bargaining structure the major power projects are already threatened by legal strike and lockout activity from a number of different directions. In the existing bargaining arrangements for the agreements covering the major power projects a strike or lockout possibility already arises normally in several different bargaining relationships each year.[15] Also, many contractors working on major power projects remain susceptible to ICI Sector strike or lockout activity so that their work on the project will be shut down by such activity.[16] Furthermore, the major power projects are as

susceptible as any construction project to strike activity in the manufacturing and transportation industries as it affects the supply of essential materials. I also doubt whether it is realistic to see shutdowns of major power projects by legal strike or lockout action as endangering the actual power supply in the Province. Ontario Hydro operates its system within a margin of safety insofar as the sufficiency of supply and the planning and construction of new facilities is concerned. While I understand that recent policy decisions have reduced that margin, it surely would be a rare combination of circumstances that would produce an actual energy crisis as a result of legal strike or lockout activity affecting Ontario Hydro's construction program.

27. The concern for involving Ontario Hydro projects in ICI strike and lockout activity has also to be viewed now in the light of the provisions of Bill 22. Any legal strike or lockout action in the ICI Sector will presumably now shut down all construction work in the ICI sector across the Province, at least in the trades affected. The public interest implications of such a strike or lockout are, therefore, now similar to the implications of a strike or lockout affecting the major power projects. To exclude the major power projects from the ICI sector under Bill 22 because of concern about

strike and lockout activity in that sector is to proceed on an assumption about the probable nature of labour relations activities in that sector under Bill 22 which is intolerable from a public interest perspective whether or not the power projects are a part of the sector.

28. For the various reasons stated, therefore, I am not persuaded that the immunization of the major power projects (or of the lines and stations projects for that matter) from the legal strike or lockout activities of the ICI Sector is important from a public interest perspective, and the recommendations in this report have been developed without regard for that as an objective.

29. In the foregoing pages I have outlined the obvious fundamental factors which in my opinion any new policy must accommodate, as well as indicating some it may safely ignore. The challenge for this Commission and ultimately for the government is to find a bargaining structure which resolves the labour relations problems arising out of the obvious overlap between the ICI Sector and the EPS Sector while taking realistic account of the EPS Sector's special needs and features.

FOOTNOTES TO CHAPTER ONE

1. See Section 106, The Labour Relations Act, R.S.O. 1970, c. 232, as amended by 1975, c. 76.

2. All of the sectors mentioned in Section 106 suffer from the same lack of specific definition.

3. The present agreements do not appear to define the line of demarcation between the two kinds of work very clearly but in practice there do not appear to have been substantial problems in keeping the two separate.

4. See Chapter Two, page C.2-9.

5. See Appendix C.

6. For an analysis of Ontario Hydro's role as contractor, see Chapter Two, page C.2-14.

7. The separation has its origins in the labour relations arrangements on the Sir Adam Beck No. 2 project at Niagara Falls in the early 1950's. See EPSCA's brief to the Franks Commission, February 16, 1976.

8. See Chapter Four, page C.4-30 and Appendix E.

9. See the First Report, Special Commission of Inquiry into British Columbia Construction, October 1975, p. 47-48.

10. Effected by displacing the so-called "national agreements" with the province-wide Bill 22 agreement. See sections 132 and 133 of The Labour Relations Act (supra) as amended by Bill 22. See infra, Chapter Four, paragraph 7 (p. C.4-5) and paragraph 11 (p. C.4-8).

11. They compete directly with non-union contractors (see the reference to the increase of non-union construction in Ontario in the Brief to the Franks' Commission of the Construction Labour Relations Association of Ontario, January 30, 1976, at page 17-18), and indirectly with the increasing employment of industrial union labour by industrial employers on expanded off-site fabrication work and on in-house, on-site construction activity.

12. See Chapter Four, paragraph 7, page C.4-29, and Appendix E.

13. See Chapter Four, paragraphs 2 to 10, pages C.4-1 to C.4-8.

14. The cost of delaying the on-stream date of one nuclear 750 megawatt generator has been calculated by Ontario Hydro at $10,000 per hour of delay. This assumes that the effect of the delay will be the continued production of the same amount of power using existing coal-fired generators. $10,000 per hour is the difference between the cost of producing 750 megawatts of power for one hour using coal-fired generators and producing the same amount of power using nuclear powered generators.

15. Ontario Hydro currently negotiates seven separate collective bargaining agreements affecting the major power projects.

16. Contractor members of contractors associations which are negotiating with unions who are not members of the Ontario

Allied Construction Trades Council, for a local agreement in the locality of major projects, or for a provincial agreement, are considered to be directly involved in any strike or lock-out activity that results and are shut down whether or not they are working on an electrical power systems sector project. The legal basis for the involvement in the strike or lock-out is that the local agreements (or provincial as the case may be) of unions who are not parties to the EPSCA agreement are typically all sector agreements, in the sense that they do not limit the scope of their agreements in terms of sector, and thus encompass all of the work of the contractor members of the negotiating association including work on electrical power systems sector projects.

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CHAPTER TWO

ONTARIO HYDRO'S CONSTRUCTION PROGRAM

The Present Program

1. The problem cannot be properly understood without a reasonable appreciation of the massive nature of Ontario Hydro's construction program in Ontario, both in terms of what is presently on the boards and what can be reasonably anticipated for the future, and some idea of how that program compares to other sectors of the industry, particularly the ICI sector.

2. In 1977 Ontario Hydro had the following active construction projects:

(1) Heavy Water Plants "B" and "D"[1]

These are two heavy water plants being constructed at the same time (B will come into operation ahead of D). They are located on the shore of Lake Huron in the Bruce Power Development site in the County of Bruce. Work commenced on these projects December, 1973 and it is expected that "B" will be operational by March, 1979 and "D" by January, 1981.

The total project budget for the two plants is $1,323,000,000.[2]

The 1977 budget was $240,000,000.

(2) Bruce G.S. "A" and Bruce G.S. "B"

On the same site in Bruce County where the heavy water plants are being constructed, Ontario Hydro is also constructing two new generating stations, "A" and "B", each involving four, 750 megawatt generators powered by nuclear fuel.

Generating station "A" was started in 1969 and will be completed in 1979. "B" was started in 1977 and is expected to be completed in 1986. The total project budget for generating station "A" is $1,415,584,000; for generating station "B", $2,792,000,000.

The 1977 budget for station "A" was $188,829,000 and for station "B" $49,557,000.

(3) Wesleyville Generating Station

This is a new project just commenced in 1977 which it is expected will be completed in 1983. It involves the construction of four, 500 megawatt generators which will be fueled by oil. It is located on the shore of Lake Ontario just west of Port Hope.

The total project budget for Wesleyville is $1,038,866,000.

The 1977 budget was $46,750,000.

(4) Thunderbay G.S. Extension

Ontario Hydro is in the midst of a major extension of its generating facilities at Thunderbay. The extension will add two, 150 megawatt generators to the facilities. The energy source here is coal. The project is located at Mission Island near Thunderbay. It was commenced in 1975 and Hydro expects it to be completed in 1981.

The total project budget for this extension is $310,282,000.

The 1977 budget was $34,854,000.

(5) Lennox G.S.

This project, involving the construction of four, 500 megawatt generators using oil as the energy source, is located on the Lake Ontario shoreline just west of Kingston. Construction started here in 1970 and it is just about completed.

The total project budget for Lennox was $470,000,000.

The 1977 budget was $9,733,000.

(6) Nanticoke G.S.

This is another major project that is in its closing stages. It involved the construction of eight, 500 megawatt generators. The energy source is again coal. The construction started in 1967 and is expected to be completed

in 1978. It is located on Lake Erie at Port Dover.

The total budget for Nanticoke was $770,593,000.

The 1977 budget was $31,019,000.

(7) Pickering G.S. "B"

Ontario Hydro has a continuing construction program at the Pickering Nuclear Power Generating site. It is building a second generating station involving four additional 540 megawatt generators.

The project started in July 1974 and is expected to be completed in July of 1983.

The total project budget is $1,865,000,000.

The 1977 budget was $198,615,000.

(8) Darlington G.S.

This is a new nuclear generating station located south-west of Bowmanville involving

four, 850 megawatt generators. Site preparation started in October 1977 and it is expected to be completed, January 1988.

The total project budget is $3,950,000,000.

The 1977 budget was $12,100,000.

(9) Atikokan G.S.

This is also a new project (coal-fired) involving initially two, 200 megawatt units. Construction started late in the year.

The total project cost is $550,000,000.

The 1977 budget was $7,000,000.

(10) Miscellaneous Construction

Ontario Hydro has, in addition to these major projects, a certain amount of miscellaneous construction activity in the generating side of its program and the budget for that in 1977 was $7,000,000.

(11) Lines & Stations

In addition to the construction of generating stations there is the "lines and stations" construction activity covering the construction of transmission, transformation and distribution facilities. The construction program covering the lines and stations involve a large number of different projects; in 1977 about 300 in all, with a range in value amongst them from $25,000 to $100,000,000. Of these the largest presently under construction are as follows:

(a) A transmission line from Middleport Transformer Station to the Milton Transformer Station. This is a 500 kilowatt steel tower line approximately 40 miles in length.

(b) A 500 kilowatt steel tower line of approximately 20 miles in length between the Milton Transformer Station to the Trafalgar Transformer Station to the Claireville Transformer Station.

(c) A 500 kilowatt steel tower line of approximately 109 miles in length between the Bruce Generating Station and the Milton Transformer Station.

(d) A 500 kilowatt steel tower line of approximately 135 miles in length from the Lennox Generating Station to the Cherrywood Transformer Station.

There are also four switching and/or transformer stations presently under construction. One at Milton. Another at Claireville; a third at Trafalgar and the expansion of an existing station at Cherrywood.

The total estimated expenditures in 1977 for the lines and stations program is approximately $193,000,000 of which about $30,000,000 represents the acquisition of property rights.

3. The foregoing projects represent a total dollar volume of construction of approximately, fifteen billion dollars and involved a 1977 construction budget of about one billion dollars.

Future Program

4. The foregoing are the major projects presently authorized. Ontario Hydro however expects that additional projects of comparable size will be opened on a fairly regular basis.[3] It estimates that its total construction program over the next ten year period will approximate ten billion dollars.

Comparison with the Industrial, Commercial and Institutional Sector.

5. Statistics from Statistics Canada (Construction in Canada - Table 7) indicates that the total dollar volume of construction work in the industrial, commercial and institutional sector in Ontario in 1975, the last year for which figures are available, was $2,211,587,000. This is really the only hard information about the ICI sector volume that I was able to obtain. If it is a reliable indication of what can be expected in the ICI sector then one can see that the Ontario Hydro construction program approximates one-half of the total ICI sector volume.

6. I am a little uncertain about the validity of that conclusion because of the mammoth petrochemical projects in the Chemical Valley in the Sarnia area involving several billion dollars. During the course of my meetings the significance of the Ontario Hydro construction program in the overall picture was often disparaged by comparing it to the ICI work being done in the Chemical Valley which was just a part of the ICI sector and yet itself comparable to the Hydro program.

7. No doubt when one takes into account the volume of construction work in the Chemical Valley at the present time, the characterization of the Ontario Hydro program as about half of the total ICI program is probably wrong. However, if it were realistic to characterize the current Chemical Valley volume as an anomoly in the ICI sector experience, then the 50% figure might still be a fairly realistic indication of the relative significance of the Hydro program over the long run. I am not concerned in any event in making fine distinctions in this area. What is clear from the foregoing and what is important to the Inquiry is that Ontario Hydro construction work is a major component of the Ontario construction industry and is likely to remain so for the foreseeable future.

Ontario Hydro as a Construction Industry Customer

8. In the meetings I had there was a tendency to focus primarily on Ontario Hydro's role as an employer of construction tradesmen - the extent to which it acts as a contractor on its own projects. But one of the more significant, and interesting, aspects of the labour relations problems with which this Commission is concerned is surely the extent to which Ontario Hydro is also the construction industry's best customer.

9. Hydro's role as customer is of course governed by its policy concerning the extent to which it contracts construction work to others. Originally, when it was primarily involved in water-power projects, its tendency was to do all, or virtually all, of the work itself. In more recent years, however, as it started to do more and more industrial-type generating facilities the amount of work contracted has risen steadily and I am told by Ontario Hydro representatives that it is expected that the percentage of construction work contracted out will continue to rise in the foreseeable future. Ontario Hydro is determined to maintain a substantial construction capability of its own but has apparently reached the point where it is reluctant to permit the size of its own forces to rise at the rate that would be necessary to keep pace with the anticipated growth in its construction program.

10. An indication of the extent of Ontario Hydro's work that is being contracted may be seen in an Ontario Hydro internal report dated June 29, 1977,[4] comparing field costs as between work by Ontario Hydro forces and work by contractors covering construction at Bruce, the Nanticoke project, the Pickering "B" project, Wesleyville and Miscellaneous projects. The report indicates that

of the total field costs (that is to say all costs not including the cost of permanent materials) spent on those projects to the end of June, 1977 (when the report was made), 59% was spent in respect of work done directly by Ontario Hydro forces and 41% was spent on work done directly by contractors.

11. Another more recent indicator of the proportion of work being contracted are the total man-hours of construction labour worked on major power projects in 1977. Of the total 11 million man-hours of construction labour employed on the major power projects in 1977, 59% were employed by contractors and 41% were employed by Ontario Hydro.[5] These figures may be a bit misleading because the two heavy water plants are being built almost entirely under contract and, by themselves, represent a significant proportion of the total contractor man-hours. It appears that the construction of the heavy water plants may be a somewhat anomolous aspect of the current Ontario Hydro construction program. From my discussion with Ontario Hydro representatives I have formed the impression that the almost total reliance on contracted work in the Heavy Water Plant project was something of an experiment and that it remains open to question whether the same kind of approach would be repeated on another occasion. (I

should note here that the Thunderbay project is also entirely contracted. However, it is a smaller project involving a coal-fired facility employing well-known technology and apparently represents the type of work that Ontario Hydro is more and more content to contract). Accordingly, it may be that a truer picture of the present trend toward more contracting would be obtained by looking at the 1977 man-hour figures without the Heavy Water Plant project figures included. On that basis, the corresponding percentages are 60% for Hydro forces and 40% for contractor forces - figures it may be noted that compare very closely to the conclusions of the June 29th report referred to above.

12. It can be seen, however, that even if the trend towards a greater proportion of contracted work stalls where it is, there would still be about 5 billion dollars worth of construction contracts to be let by Ontario Hydro over the next ten years, and if the trend continues, potentially, much more.

13. These statistics are of limited value in communicating the nature of the contracting program and for the reader who may be interested in a more detailed indi-

cation of the kinds of things that are being contracted I have included at the back of this Chapter lists of active contracts in 1977 on two projects: Pickering "B" and Bruce G.S. "A" and "B"; showing the name of the contractor, a brief description of the work and the value in dollars of each contract.

Ontario Hydro as an Employer of Construction Workers

14. The Ontario Hydro monthly strength statements showing the numbers of individuals employed on the major power projects (not including the lines and stations work) for the year 1977 showed the following average figures as to the numbers employed by Ontario Hydro in the different building trades:

Boilermaker	68
Camp Staff A	71
Camp Staff B	36
Carpenter	337
Millwright	39
Cement Mason	31
Electrical Worker	540
Firefighter	30
Iron Worker	191
Labourer	502

Machinist	18
Operating Engineer	135
Painter	52
Pipefitter	464
Teamster	151

15. The Ontario Hydro Monthly Strength Statements showing the numbers of individuals employed on the Lines and Stations construction for the year 1977 showed the following average figures as to the numbers employed by Ontario Hydro in the different building trades:

Electrical Worker	622
Carpenter	69
Teamster	85
Operating Engineer	87
Labourer	136
Pipefitter	4
Iron Worker	13

16. It will be seen that there are some trades in which Ontario Hydro employs large numbers and others in which the numbers are relatively insignificant.

17. Some indication of the importance of Hydro as an employer of tradesmen may be gathered from a comparison with private contractors. Looking particularly at the trade of

pipefitter which is one of the trades in which the Ontario Hydro employs large numbers of tradesmen, on the basis of Ontario Hydro's Monthly Strength Statements it is possible to determine that during 1977, on the average, 18% of all of the tradesmen employed by Ontario Hydro were fitters. The total number of man-hours worked by tradesmen directly employed by Ontario Hydro in 1977 on major power projects (where virtually all of the pipefitters are employed) is approximately 4.5 million man-hours. It is apparent, therefore, that in 1977 Ontario Hydro employed approximately 810,000 man-hours of pipefitters' time. One group of private contractors that employ a significant percentage of the total membership of the United Association in Ontario is the industrial contractors or what the United Association refers to as the "National Contractors". These are contractors who are parties to the United Association's national contract. A list of those contractors as given to me by the United Association is as follows:

Aiton

Arthur G. McKee

Babcock and Wilcox

Bechtel Canada

Canadian Badger

Catalytic Enterprises

Combustion Engineering

E.T.S Mechanical

Foster Wheeler

Howden Parsons

The Lummus Company of Canada

W.A. Stevenson

Tri Canada

Wilputte Canada

18. The United Association advises me that in 1977 these fourteen contractors together employed approximately 7 million hours of pipefitters' time in the Province of Ontario (including 1.9 million hours on Ontario Hydro Projects).[6]

19. When Ontario Hydro as an employer of pipefitters is compared to these contractors it is apparent that Ontario Hydro employed approximately 12% of the total man-hours employed by the fourteen national contractors, and was exceeded as an employer of pipefitters on an individual basis only by three of the national contractors.

20. Obviously, there are very sizeable mechanical contractors engaged in construction work in Ontario who are not parties to the United Association's national agreement and who would employ comparable numbers of pipefitters, so that this analysis is less than complete. Still it seems safe to conclude that Ontario Hydro is at least one of the major employers of pipefitters in Ontario.

21. Ontario Hydro may be taken to have at least a comparable status as an employer of electrical workers since it employs about twice as many electrical workers as it does pipefitters. With respect to other trades it obviously, would not be nearly as high on the list of significant employers.

22. The total number of construction tradesmen employed in 1977 by Ontario Hydro on the major power projects based on an average of the totals reported in the Monthly Strength Statements is 2,700. The Canada Department of Labour reports that the total unionized construction labour force in Ontario on January 1, 1976 was 103,410.[7] It is apparent, therefore that during 1977 Ontario Hydro itself employed on the major power projects approximately 2.6% of the unionized construction labour force in Ontario. (When the tradesmen employed on lines and stations work is included the percentage is 3.6).

23. The Ontario Hydro Monthly Strength Statements indicate for 1977 an average total contractors' labour force on the major projects of 4,300 tradesmen, so that the corresponding percentage for all tradesmen - Ontario Hydro and contractors - employed on major power projects is 4.2%.

24. When the figures for Lines and Stations are included with the totals for the major power projects, the total employ-

YORK
UNIVERSITY

OSGOODE HALL LAW SCHOOL

4700 KEELE STREET, DOWNSVIEW, ONTARIO M3J 2R5

667-3482

January 31, 1978

The Honourable Dr. Bette Stephenson, M.D.,
Minister of Labour,
400 University Avenue,
TORONTO, Ontario.
M7A 1T7

Dear Dr. Stephenson:

My inquiry into the desirability of extending or applying Bill 22 to the Electrical Power Systems Sector of the Construction Industry is complete and I herewith respectfully submit my report.

Yours very truly,

S. R. Ellis

SRE/eh

Encl.

ment of construction workers - both Hydro and contractors - in Ontario Hydro's construction program will be seen to approximate 7.8% of the total unionized construction labour force in Ontario.[8] If the peak employment figures for the major projects are used, the corresponding percentage is 9.9%.

25. When the above figures are considered in light of the fact that the levels of employment indicated can be relied upon to be at least maintained each year over the next ten years, it is apparent that Ontario Hydro is one of the more significant employers of construction tradesmen in the construction industry and that the major power projects and the Lines and Stations work are truly an important component of the construction industry generally.

15 December 1977

Contractors on Site in 1977

Project: Pickering "B"

Contractor	Brief Description of Work	Value (K$) in 1977*
Margven Roofing Ltd.	Roofing	133
Key Masonry (AIFB)	Brick & Block	283
Key Masonry (5 & 6)	Brick & Block	363
Pollard Roofing (AIFB)	Roofing	68
Dewar Insulation	Pipe Insulation	46
Danhart Sheet Metal Ltd. (AIFB)	Heat & Vent.	39
Repac Const. & Mat.	Sand & Plow	3
Columbia Building Mtc.	Janitor Service	26
Newman Steel	Structural Steel	7,036
Robertson Building Systs.	Siding	424
Bermingham	Pile Driving	455
Boehmers	Concrete Supply	2,091
G & H Steel	Reinforcing	1,297
McKinnon & Mitchell	Heat & Vent.	8
Hallum Lathing	Plastering	5
Canada Metal	Bearing Plates	0
Maple Leaf Taxi	Taxi Service	1
Johnny-on-the-Spot	Portable Toilets	18
T. Puckrin	Waste Disposal	2
Abell Waco	Pest Control	1
Pelican Linen Supply	Mats	1
Durham Business Machines	Service	1
English & Mould	Glycol	538
Canadian Foundry Supplies	Blasting Sand	19
York Marble Tile & Terrazzo Ltd.	Ceramic Wall & Floors	5
Knight Bros. Sales & Service	Resilient Flooring	0
Glaverbell Indistries Inc.	Glazing	20
Babcock Wilcox **	Boilers	11,195
Beckett Elevator	Powerhouse Elevators	38
Lanor Niagara	Cranes	0
Baxter Crane Rental	Cranes	0
Otis Elevator	Serv. Area Elev.	94
Price Tri-Tile Ltd.	Metal Louvres & Bird Screens	4
Secord Mfg.	Overhead Doors	24
Repac	Paving	62
Secord Mfg.	Sliding Doors	26

* Approx. value covering actual payments in 1977 to date + projections of other payments to end of year.

** On site work involved 7 men for 4 months.

Contractors on Site in 1977

Project: ..BRUCE GS "A".....

Contractor	Brief Description of Work	Value (K$) in 1977*
ADAM CLARK	Installation of pumphouse equipment	390
ALEXANDER CRAIG LTD.	Phase II Units 3 and 4 painting	62
AMALGAMATED METAL	Spent Fuel Bay Lines	287
BABCOCK AND WILCOX	Steam Drum Installation	231
BECKETT ELEVATORS	Installation of elevators	51
H. BOEHMER	Supply and delivery of Redi-mix concrete	298
CAMPBELL CONSTRUCTION	Supply and deliver granular fill	11
CANADIAN JOHNS MANVILLE	Thermo-insulation for piping and equipment	1,360
CHEMICAL VALLEY INSPECTION	Radiography and Ultrasonics	34
CLIFFORD MASONRY	Shielding Block Units 1 and 3	283
COMSTOCK INTERNATIONAL	Installation of 500 KV Switchyard Equipment	38
CRANE COCHRANE	Water Treatment Plant	179
DE LAVAL TURBINE	Steam surface condensers	444
DEWAR INSULATION	Insulate shield tanks	33
DOMINION MASONRY & STONE	Masonry and Shield Block Unit 4	135
DUFFERIN ROOFING	Installation of roofing Aux. Bldg.	89
G & H STEEL	Placement of reinforcement steel in formwork prior to the placing of concrete	47
HARRISON MUIR	Phase III Painting	915
HEATHER & LITTLE LTD.	Installation of Roofing Units 3 & 4	42
HILL & GLASSER	Wall and floor tile	5

*Approx. value covering actual payments in 1977 to date + projections of other payments to end of year.

ontractors on Site in 1977

roject: . BRUCE GS "A".....

Contractor	Brief Description of Work	Value ($K) in 1977*
HOWDEN PARSONS LTD.	Turbine Generators	1,392
HOWDEN PARSONS LTD.	Excitation equipment	44
KINCARDINE CONSTRUCTION	Supply and delivery of granular fill	112
E.C. KING	Supply and delivery of granular fill	175
E.C. KING	Supply and application of asphalt on roads and parking lots.	545
MCKINNON MITCHELL ASSOC.	Air conditioning for clean room facility	8
MCKINNON MITCHELL ASSOC.	Duct work Units 1-4	207
POWERS REGULATOR	Pneumatic Messenger Systems	20
REXWAY SHEET METAL	Four sets of duct work and erection of fan units and cooling coils	65
REXWAY SHEET METAL	Ductwork and air handling units. Units 1, 2, 3	14
REXWAY SHEET METAL	Heating and ventilating system, Ancillary Service Bldg.	301
REXWAY SHEET METAL	Steam drum air cooling system	654
JOHN E. SMITH	Plastering suspended ceilings, wall and floor tile	29
SUTHERLAND SHULTZ	Ancillary Service Bldg. Chilled water for upgraders and air conditioner Room 406	84

*Approx. value covering actual payments in 1977 to date + projections of other payments to end of year.

15 December 1977

ontractors on Site in 1977

roject: BRUCE GS "A"

Contractor	Brief Description of Work	Value (K$) in 1977*
VIPOND AUTOMATIC SPRINKLER LTD.	Transformer deluge and sprinkler system	78
WATTS HENDERSON LTD.	Service air conditioning units 1-4	18
WESTEEL ROSCO LTD.	Installation of roof and floor decking	23
WESTEEL ROSCO LTD.	Installation of siding	119

*Approx. value covering actual payments in 1977 to date + projections of other payments to end of year.

15 December 1977

'ontractors on Site in 1977

'roject: BRUCE GS "B" .....

Contractor	Brief Description of Work	Value (K$) in 1977*
C.A. PITTS	Excavation and site grading	8,600
PRO ENGINEERING	Dismantling garage and firehall at Bruce A and re-erecting at Bruce B	109
PRO ENGINEERING	Dismantling carpenter shop at Bruce A and re-erecting at Bruce B	112
JOHN WHEELWRIGHT	Supply and erect steel electrical building	70
FROST FENCE	Supply and erect security fence	181

*Approx. value covering actual payments in 1977 to date + projections of other payments to end of year.

FOOTNOTES TO CHAPTER TWO

1. Heavy Water Plant "C" has been cancelled.

2. Cost figures are all-in figures including labour, materials, engineering and overhead.

3. See Appendix F, Ontario Hydro Bar Chart showing its Consolidated Long Range Program as of July 25, 1977. Only the projects with names have been actually authorized.

4. Contract Comparison Report for period ending June 29, 1977, prepared by W.D. Murray.

5. See Appendix C.

6. See enclosure in the letter to this Commission from Mr. J.R. St. Eloi, Director of Canadian Affairs, United Association, dated January 17, 1978.

7. As yet unpublished information obtained for this Inquiry by Ontario Hydro.

CHAPTER THREE

THE PRESENT BARGAINING STRUCTURE IN THE ELECTRICAL POWER SYSTEMS SECTOR

1. There are a number of different bargaining relationships currently to be found in the Electrical Power Systems Sector (Ontario Hydro part).

2. The Electrical Power Systems Contractors' Association ("EPSCA") bargains with the Ontario Allied Construction Trades Council ("OACTC") in repsect of the following trades:

Insulators
Boilermakers
Painters
Teamsters
Operating Engineers
Labourers
Carpenters
Millwrights
Cement Masons[1]

EPSCA is an association of employers in the sector in which Ontario Hydro plays a dominant role.[2]

3. EPSCA and the OACTC negotiate one agreement covering all

employees of the members of EPSCA in the trades represented by OACTU. Furthermore, by provision in its standard construction contract Ontario Hydro requires contractors accepting contracts on Ontario Hydro projects who are not members of EPSCA to agree to apply the terms and conditions of the EPSCA agreement to its employees engaged on the project in the trades represented by the OACTC.

4. The EPSCA agreement has a "master" portion and a separate appendix for each trade. The appendices are negotiated by appendix sub-committees of EPSCA directly with the trades involved so that the negotiations are to a significant extent maintained on a trade-by-trade basis. The list of substantive subjects covered in the master portion of the agreement and effectively negotiated on a multi-trade basis is as follows:

1. Recognition
2. A separate "foremen" appendix
3. Annual review of issues by "Executive Committees" of both parties
4. Project Committees
5. Union representation
6. Union Stewards
7. Advance Notice of Work
8. Jurisdictional Dispute Resolution Procedures
9. Union Security
10. Checkoff
11. Hiring

12. Pay Procedures
13. Vacation and Statutory Holiday Pay Trust Funds
14. Vacation Pay
15. Statutory Holidays
16. Call-in Pay
17. Reporting Pay
18. Daily Travel Allowance
19. Room and Board
20. Rent Periods
21. Lunchroom Facilities
22. Meals on Unscheduled Overtime
23. Tools and Clothing
24. Apprenticeship and Trades Training
25. Hours of Work - general provisions
26. Grievance Procedure
27. Arbitration
28. No Strike - No Lockout
29. Term
30. Contract Reopener

The list of matters which the agreement permits to be dealt with in the appendices on a trade-by-trade basis are:

- wages
- classifications
- benefits (pension, welfare and supplementary unemployment benefits)
- hours of work not covered in the master portion of this agreement
- overtime rate
- premiums
- shift differential rate
- inclement weather pay
- apprenticeship and training programs
- seniority
- supply of tools
- key tradesmen
- protective clothing and equipment
- welding tests
- travel and transportation
- employer's responsibility

5. A number of trade unions whose members are employed regularly on EPS Sector projects and who are not members of OACTC bargain independently directly with Ontario Hydro for agreements which cover members of their union employed directly by Ontario Hydro in construction work on Hydro projects. Thus, Ontario Hydro has direct, separate collective agreements covering Hydro construction employees with the following unions:

IBEW, Local 1788
Ironworkers
United Association
Machinists
Hotel and Restaurant Employees
Office and Professional Employees

6. Another set of bargaining relationships which are not directly concerned with the Electrical Power Systems Sector but which have a direct impact on the labour relations in the sector are the negotiations between the foregoing independent unions and the ICI contractors. Prior to Bill 22, these were typically local negotiations between locals of those unions and local ICI contractors' associations. Under Bill 22, it will be province-wide negotiations. The reason that these negotiations impact on the labour relations in the Electrical Power Systems Sector is that when Ontario Hydro contracts construction work involving the employment of trades not represented by OACTC, those contractors employ such tradesmen under the terms of

the applicable ICI Sector agreements (or in the case of other sector-type work, possibly under the corresponding agreement pertaining to the other sectors).

7. The relative importance of these various relationships may be seen from the breakdown of total 1977 man-hours on the major power projects employed under the various types of agreements.[3] These are as follows:

Ontario Hydro Employees:

Under EPSCA Agreement	-	2.432 million
Under Non-EPSCA Agreements	-	2.057 million

Contractors' Employees:

Under EPSCA Agreement	-	3.914 million
Under Non-EPSCA Agreements	-	2.586 million

8. All of these several agreements are open for re-negotiation on a one or two year basis. The EPSCA agreement is ostensibly a ten year agreement but it contains a re-opener clause that effectively permits re-negotiation on an annual basis.

9. In the agreements covering the buildings trades - EPSCA and the first three listed in paragraph 5 - it is the practice for

the parties to accept the local ICI wage package and to negotiate seriously only about the working terms and conditions.

10. It is not true to say, and has not been true for a number of years, that Ontario Hydro projects pay higher wages or benefits. The local rates apply. Neither do the projects utilize scheduled overtime or other types of premiums to attract tradesmen. The competitive advantage the major power projects have over local contractors in attracting tradesmen appears to lie solely in the long-term work prospects that the major projects can offer.

FOOTNOTES TO CHAPTER THREE

1. The Operative Plasterers' and Cement Masons' International Association of the United States and Canada, joined the Council in December, 1977.

2. The EPSCA Constitution and By-Laws formally provide Ontario Hydro itself with majority control of the Association. See Chapter Four, paragraphs 23 to 30, pages C.4-19 to C.4-25, for a discussion of Ontario Hydro's role in EPSCA.

3. See Appendix C.

CHAPTER FOUR

ANALYSIS OF THE PROBLEM

1. As with any problem-solving exercise, the most important and generally most difficult step is to identify, understand and appreciate the nature and full dimensions of the problem. I propose to start with an analysis of what seems to be wrong with the present arrangements.

PROBLEMS WITH THE PRESENT ARRANGEMENTS

Impact on ICI Bargaining

2. The major source of contractors' dissatisfaction with the isolation of the EPS sector from the ICI sector for collective bargaining purposes seems to be the extent to which that separation is thought to have undermined the contractors' bargaining strength in the ICI sector. That the separation of the Major Power Projects part of the EPS sector from the ICI sector collective bargaining process has had significant negative impact on the ICI contractors' bargaining position over the past several years is

not, I believe, seriously disputed even by the unions. In assessing the present significance of this aspect of the problem, however, it must be recognized that to a considerable extent that impact was a function of the local bargaining that characterized the ICI sector prior to the introduction of Bill 22.

3. The most serious problem the exclusion of major power projects from the ICI collective bargaining process presents from a contractor's perspective is that when ICI sector strikes or lockouts take place the major power projects are not affected. Prior to Bill 22, when the ICI bargaining took place at a local level between the local union and a local contractors' association, the presence of a major power project in the area covered by a local negotiation meant that some significant proportion of the local union's members would continue to be fully employed during the course of any strike or lockout action.[1] Because of the size of the project relative to the normal level of contractors' construction activity in the local area, the proportion of a union local's members in this "protected" position was often very high. The contractors, on the other hand, were not the beneficiaries of any corresponding advantage since, because

of the nature of the work on the power projects, local contractors often were not significantly involved in those projects. The result was that if the negotiations proceeded to a strike or lockout phase, all of the contractors' projects would be closed down but only those members of the union not employed on the power projects would be out of work.[2] In those circumstances, the contractors' projects could be shut down for any period of time at relatively little cost to the local union or its members and a union might find itself effectively in the position of dictating a settlement.

4. Contractors who have been involved in negotiations in areas affected by major power projects also feel strongly that the project seriously distorts the negotiation process itself because of the union practice of submitting settlements, or final employer proposals, to rejection or ratification by union members under a procedure that permits local union members employed on the major power projects and so personally unaffected by the prospect of a strike or lockout to vote alongside those members who were or would be out of work if the strike or lockout commenced or continued. The contractors believe that in these

circumstances settlements or final offers are often rejected and strike votes achieved by voting margins that reflect nothing-to-lose-votes.

5. The union practice in this latter regard does not appear to be uniform. I am told, for example, that at least one union adopts the practice in such a situation of excluding from the voting procedure those members whose employment will not be affected by any strike or lockout action. There is no doubt, however, that it is the more common practice in strike situations to permit all local members to vote regardless of their personal employment status. This is not, moreover, an illogical approach to the question of ratification since the terms accepted by the vote will be the terms and conditions of employment under which all local members will subsequently be employed. This, it may be noted, is also true with respect to members of the local employed on the major power projects in respect of the wage package, since up to now EPSCA and Hydro have automatically adopted wages negotiated locally. From the contractor's point of view, however, this latter practice makes the vote of the union member employed on the major project even more suspect since not only has he nothing to lose but he is voting

effectively for his own future wages and benefits and, therefore, has, as well, everything to gain.

6. It is not difficult to appreciate the frustrations of a contractors' association seeing a settlement hard-won at the bargaining committee level being defeated at a membership meeting dominated by nothing-to-lose-and-everything-to-gain votes. But attributing to these voting arrangements a fundamental role in the bargaining results assumes a general propensity among union members to look always to their own selfish interests, if need be at the expense of their own fellow members. I think it more likely that the undoubted problems contractors' associations have experienced in obtaining favourable settlements from unions where a major hydro project is active in their area simply reflected a hard-headed assessment by the membership of the strength of the union's bargaining position.

7. It must also be noted that the major power projects were not alone in having this kind of impact on local bargaining. Virtually every major industrial construction project - petrochemical or metallurgical refineries, pulp and paper mills, etc. - had the same

effect on the local contractors' association's bargaining position. This was caused in the case of the industrial projects by the international industrial contractors' practice of working under so-called "national" collective bargaining agreements. National agreements, usually negotiated between the industrial contractors and the various building trade unions at the international union level, protected the contractors' projects from any involvement in strike or lockout action in local negotiations. Since most of the major industrial projects in the province would be constructed under contract to one of these international industrial contractors, the result was to immunize all industrial major projects from local strike or lockout activities in the same way that the major power projects were immunized, and to the same effect. Furthermore, local contractors were faced with the same problem in any situation where at the time of local negotiations the total demand for tradesmen in adjoining local areas exceeded the supply. In those circumstances, the day the strike or lockout commenced, the union members would "go down the road" and find immediate employment in those other areas, to the same effect as if they were employed on a major project.

8. The availability of alternate employment opportunities in a strike situation is a general problem with local negotiations and the major power projects were just one aspect, although a significant aspect, of that problem.

9. Ontario Hydro and EPSCA recognized the impact their projects were having on the bargaining in the ICI sector, and in 1975 in an effort to minimize that impact formalized a policy which Ontario Hydro had previously been following as a matter of practice with respect to its own employees whereby they would not increase the size of the labour force on major power projects in any trade that was involved in a strike or lockout action in the local area. This was of some help to the local contractors' association by preventing a transfer of employees from the struck contractors to the major project after a strike had started. However, where the employment of the trade in question at the major project had reached substantial numbers prior to the strike or lockout date, the "freeze" policy could not make a decisive difference in the economic advantage the major project contributed to the union's position.

10. It is, of course, impossible to assess the actual impact on bargaining in the construction industry in Ontario over the years, of the isolation of the major construction projects - both power projects and industrial projects - from local bargaining. That it has been a significant factor, however, cannot be doubted. The impact on any particular bargaining situation depends, of course, entirely on the timing of the local negotiations relative to the manpower requirements at the major project. But there will inevitably have been occasions where the timing was such that the local union's bargaining position was substantially strengthened, and given the well-recognized "ripple" effect of unusual settlements upon other negotiations in the construction industry, there is little doubt that settlements achieved in those circumstances will have contributed significantly to the union's overall bargaining performance.

11. The advent of Bill 22 and province-wide bargaining in the ICI sector, however, changes the picture in a number of significant ways. In the first place, the industrial contractors are now required to participate with other ICI contractors in the negotiation of the provincial agreement and the so-called national

agreement is a thing of the past. Industrial major projects are therefore now part of the ICI sector for collective bargaining purposes and that source of alternative employment for striking or locked-out union members has disappeared. So too, of course, has alternate employment in adjoining local areas.

12. Even more importantly, since economic sanctions will now be imposed on a provincial basis, the impact of the employment opportunities provided by the major power projects (assuming a continuing separate status for them) is substantially diluted. Thus, while at some periods of time in the locality of, say, the Bruce Nuclear Power Development Project, the percentage of membership of a particular local union employed at the Bruce Project will undoubtedly be very high, the percentage of the total membership of that trade in the province employed on all of the major power projects in the province will be much lower and in the context of provincial bargaining the latter percentage becomes the relevant one. The percentages on a provincial basis will vary widely from trade to trade and from time to time but are unlikely in the least favourable combination of circumstances to exceed 10 or 15%.[3]

13. The existence of even this proportion of "immune" members will, of course, have some significant effect on a union's capacity to take a strike or withstand a lockout, but it is not the overwhelming situation that was potentially possible in local bargaining situations prior to the Bill being enacted.

14. Also, when one considers the problem in the context of province-wide bargaining one must then recognize that the separate status of the major power projects is, potentially at least, no longer of advantage only to the union. When the bargaining was done on a local basis the advantage tended to be wholly on the side of the union because the local contractors, by reason of the nature of the work on the power projects, were not substantially employed themselves on those projects. But on a provincial basis it will now be a fact that most of the contractors employed on the major power projects will also be involved in the provincial bargaining in the ICI sector. Accordingly, the separation of the Hydro projects from the ICI sector bargaining will mean that some of the larger contractors involved in any strike or lockout action in the ICI sector will derive economic strength from their ongoing contracts on the major power projects.

How that circumstance will impact on the negotiations is hard to anticipate until the bargaining practices and tactics, etc. under Bill 22 develop, but it is clearly now a potentially significant source of economic strength for the contractors as well as for the unions. For the contractors, however, the benefits may not be of an unmixed variety, particularly if no procedure develops for sharing that advantage with contractors without Ontario Hydro contracts. In those circumstances, the fact that some of the contractor members of an employer bargaining agency in a strike or lockout situation still have work on major power projects could be a source of division rather than one of strength.

15. It is difficult, in any event, to judge the relative impact of unaffected sources of income on either side in a strike or lockout situation. While the separate and unaffected existence of the major power projects will give both the unions and the contractors continuing sources of such income, both also have other sources: the unions have strike funds, and possible employment opportunities for their members in other sectors of the construction industry, in non-union work and outside of the province; the contractors

have possible income from other economic activities outside of the construction industry, from construction work in other sectors of the construction industry and from construction work outside of the province, etc.

16. I conclude, therefore, that while the impact of the separate collective bargaining in the major power and industrial projects prior to Bill 22 probably was not something that the collective bargaining system in the construction industry could have continued to tolerate (and presumably is one of the significant causes of the move to province-wide bargaining), it is not possible in a province-wide bargaining environment to see the impact of the separation of the major power projects from the ICI sector as an absolutely compelling reason to dispense with that separate status. It remains an important factor but one amongst a number of others.

Overlapping Collective Agreements

17. Overlapping collective agreements are another of the problems with the present arrangement. Overlapping agreements arise with respect to agreements between trade unions who are represented on the Ontario Allied Construction Trades Council and contractors who employ members of that union on major power projects. The contractor who does work on major power projects is either, as we have seen, a member of EPSCA and, therefore, a party to the agreement between EPSCA and the Ontario Allied Construction Trades Council or is bound by the terms of his construction contract with Ontario Hydro which require him to apply the terms of the EPSCA agreement to his employees on the major power project. If that contractor's agreement with a trade union member of the Ontario Allied Construction Trades Council covering work outside of the major power project is a contract which expressly covers all of that contractor's employees in the construction industry in that trade in Ontario, which is very often the case, then the contractor has with

respect to his employees on the major power project technically two agreements, both of which are binding on him, each of which covers his employees on the power project and the terms of which in certain material respects will conflict.

18. This is not often a serious problem because participation by the trade union in the Ontario Allied Construction Trades Council and its status as a party to the EPSCA agreement will normally dictate the waiver by it of the terms of the conflicting agreement. And, it even may be that the union has impliedly so waived the other agreement by the action of becoming a party to the EPSCA agreement. The difficulty arises, however, where the all-employee agreement is with a local of the international union (it is the international union that is a member of the Trades Council). Since the local and the international are separate entities for collective bargaining purposes, it may not be clear that the action of the international in becoming a party to the EPSCA agreement has any

effect on the bargaining rights of its local under the terms of a prior agreement between the local and the contractor covering all of that contractor's employees in the province. Where the local is not prepared to waive the requirements of the agreement when the contractor takes a major power project contract, the contractor is in the legally untenable position of being bound by two conflicting agreements. It is true he can avoid the situation by negotiating with the local union a specific waiver of the application of the prior collective agreement before he, the contractor, accepts the work on the Hydro Project. But the necessity of a contractor approaching the local union to obtain this waiver creates a bargaining position for the local union and puts the local in the position of being able to discriminate between contractors competing for major power project work. I have heard no evidence to suggest that there has been any abuse of this situation by any union but certainly the potential for abuse is there and the bargaining structure that has the

potential of putting a contractor in such a position obviously needs to be reviewed.

19. The potential for difficulties in the overlapping collective agreement situation is currently evidenced by the position being taken by Local 793 of the Operating Engineers in respect of work done on major power projects by members of the Ontario Erectors Association who are bound by Local 793's agreement and by industrial contractors bound by separate negotiation to the same agreement. Local 793 is the only Operating Engineers' local union in the Province of Ontario and it has province-wide bargaining jurisdiction. For several years it has negotiated what it refers to as its mechanical contractors' agreement which is province-wide and covers Operating Engineers employed anywhere in the construction industry in Ontario by contractors who are parties to the agreement. It is in effect a multi-sector agreement. It is one of the agreements in the construction industry that has not been negotiated on a local basis for

a number of years. The Operating Engineers have always been one of the members of the Ontario Allied Construction Trades Council and its predecessors. But always at the international union level. Local 793 is not a member.

20. At the time EPSCA was formed and the EPSCA agreement signed by the Operating Engineers' International Union, the Operating Engineers say it was indicated to all concerned that there would be a problem in attempting to replace Local 793's established mechanical contractors' province-wide agreement with the EPSCA agreement (the EPSCA agreement has an Operating Engineers appendix which covers the same work as that covered by Local 793's agreement), and that the relationship between the EPSCA agreement and the Operating Engineers' mechanical contractors' agreement would have to be worked out through a negotiation process over a period of time. Subsequently, and until very recently, mechanical contractors employed on major power projects in fact continued to work under the Local 793 provincial agreement notwithstanding the existence of the EPSCA agreement.

21. Recently, however, EPSCA and Ontario Hydro changed their policy and insisted on enforcing even against mechanical contractors bound by the Local 793 Agreement, the Ontario Hydro labour requirements construction contract provision that all contractors employing EPSCA tradesmen will comply with the EPSCA agreement when working in the Electrical Power Systems Sector. This has placed the contractors who are party to Local 793's provincial agreement in a dilemma - between, as one person said, a rock and a hard place. Local 793 will not waive the terms of its provincial agreement and contractors wanting work from Hydro have had to sign contracts with the labour requirements clause in it. Contractors in that position are arguably bound by two conflicting collective agreements. It is not the place of this Commission to decide the legal position of a contractor in that situation. Furthermore, it would be particularly inappropriate to do so because the very issue is a subject of arbitration of a Local 793 grievance.[4] But whatever the outcome of

that particular grievance, it is clear that either Local 793 or the mechanical contractors have a problem with the structure of the existing bargaining arrangements that requires attention.

22. I have described the problem the Operating Engineers and the mechanical contractors are having with the EPSCA arrangements at such length for two reasons. First, their situation is a classical illustration of one of the structural problems in the present situation that has to be solved. And second, it appears to me that there is some misunderstanding in the industry about the EPSCA arrangements which is traceable to what people have heard about this particular dispute and it seemed to me it would be helpful to detail the problem as I understood it.

Ontario Hydro's Dominant Role in EPSCA

23. A third feature of the present arrangements which the contractors in particular see as a problem is the extent to which it involves Ontario Hydro in effect negotiating terms and conditions of employment for other people's employees. It is true that Ontario Hydro does not do that directly. It bargains and

enters into agreements on its own behalf only in respect of its own employees. The EPSCA agreement is negotiated between EPSCA and the Ontario Allied Construction Trades Council. The complaint, however, is that EPSCA is not an independent association of contractors, and that is certainly true. EPSCA constitution and by-laws formally give Ontario Hydro itself ultimate control of the decision-making process.[5] And, in addition, Ontario Hydro provides EPSCA with its entire professional and administrative staff resources. Furthermore, for each of the contractor members of EPSCA, Ontario Hydro is currently or potentially a major customer. As a matter of fact, at the time EPSCA was formed, contractors were advised by Ontario Hydro that from that point on, to be eligible for Hydro construction contracts, membership in the EPSCA organization was mandatory. Contracts are no longer subject to membership in EPSCA but the fact that they were when EPSCA was formed is a fair indicator of the "captured" nature of the organization vis-a-vis Ontario Hydro.

24. I have no reason to doubt that the contractors who are active members of EPSCA make a valuable contribution to the negotiation of the EPSCA agreement and its various trade appendices, but it would be unrealistic

not to recognize that the EPSCA agreement is effectively an Ontario Hydro agreement. Certainly on the basis of the information supplied to me by various segments of the industry, this is a perception of the EPSCA agreement that generally prevails.

25. Again it is not easy to assess the significance of this aspect of the present arrangement. Ontario Hydro domination of the employers' side of the negotiations for the EPSCA agreement does not appear to be a matter of concern to the unions. And, while some contractors may take exception on the grounds of principle to having the terms and conditions of employment of their own employees determined through a bargaining procedure which accords to them only a secondary role, it can be argued that they submit themselves to that regime when they accept a construction contract for work on a major power project.

26. I have no means of determining how widespread or how strong are contractors' feelings about the inappropriateness of Hydro's domination of the negotiation of the EPSCA terms and conditions but that they exist is evident from some of the submissions made to me. And it may be a bit unrealistic or unfair to answer those

complaints on the basis of saying that the contractors who don't like the arrangement don't have to participate in it. Given the size of the potential business involved, a contractor would have to be a hero to pursue his objection in principle so far.

27. It is evident that the dominant role Hydro plays in the negotiation of the EPSCA agreement from the employers' side is at variance with the traditional assumption of the collective bargaining system in Ontario that collective agreements are determined through negotiations between unions representing employees and the employers of those employees.

28. It is true, of course, that in the construction industry the bargaining from the employers' side has long since been delegated as a matter of usual practice to associations of contractors so that it could be said that in the construction industry employers have traditionally surrendered their bargaining rights in respect of their own employees to third parties. And, while originally the delegation of bargaining rights to these associations was always voluntary, even that was no longer always true following the introduction of

accreditation and is, of course, now not true at all in the ICI Sector under the provisions of Bill 22. But, still, the bargaining associations are democratic associations in which each contractor member has the same status of every other member. Furthermore, the associations are associations of fellow contractors. There does seem to be a material difference as compared to EPSCA where the contractor's role is, by the constitution and by-laws of the organization, secondary to that of Ontario Hydro and where the dominant partner is not a fellow contractor but a Crown corporation.

29. How this departure from usual practice that EPSCA represents might affect the bargaining process in the long run (assuming it was to be retained) is difficult to say. In the six year history of the EPSCA organization to date it does not appear to have created any significant problems. It must be recognized, however, that the concept has not as yet been fairly tested, since EPSCA has yet to be involved in a strike or lockout situation. My own intuition and judgment suggests to me that the subordinate role of the contractors in the negotiation of the EPSCA agreement is likely to prove to be a source of instability in the present bargaining arrangements and is one of the important

things wrong with those arrangements.

30. I do not, however, mean by that to be critical of the creation of EPSCA or of Ontario Hydro assuming the controlling position in it. It was a necessary move on the part of Ontario Hydro if it was to preserve the possibility of achieving a common approach to labour relations policies affecting its construction projects and of preserving for itself an effective role in such matters. The expansion, beginning in the late 60's, of the amount of work done by private contractors on major power projects[6] made some such move essential. Without something like it, Ontario Hydro would have had no direct influence on the collective agreements governing any work done by contractors. The maintenance of the beneficial working terms and conditions and their extension to work done by private contractors on major power projects was one of the things at stake here. From that perspective, the EPSCA concept can be seen to have been an imaginative initiative with commendable objectives. It is a concept, however, that was designed by private parties (and I think for these purposes Ontario Hydro is rightly described as a private party) to accommodate an existing bargaining structure that was not particularly

apposite to the purpose and the question that arises when we come to consider amendments to the bargaining structure is whether it is a desirable or appropriate component of a revised and legislated arrangement.

Conflicting Side-by-Side Agreements

31. The foregoing has been confined largely to problems with the present arrangements from the contractor point of view. From the union perspective, if one puts aside the feelings of some unions that one difficulty with the present independent status of Ontario Hydro projects is that Ontario Hydro is too difficult to deal with, which I take to be a consideration that is not fairly relevant to my terms of reference, the major complaint is from the unions who are not part of the Ontario Allied Trades Council and who therefore have members working on major power projects for contractors under their local agreements and members working for Ontario Hydro under the Ontario Hydro agreement. This results in members of the same union doing similar work under different agreements - one gets height pay for instance and the other working at the same height does not. It is a very troublesome, internally divisive situation. As previously

mentioned, it is also a situation that creates serious problems in agreement administration and project management for Ontario Hydro and for contractors. It is an aspect of the present arrangements that all concerned deplore.

THE PROBLEMS WITH INCORPORATING THE MAJOR POWER PROJECTS INTO THE ICI SECTOR

32. The solution for the problems inherent in the present arrangements which everyone opposed to the continued separate status of the EPS sector is suggesting is the simple step of incorporating the EPS sector into the ICI sector and involving Ontario Hydro and its major power projects directly in the ICI sector bargaining in the same way that all of the major industrial contractors and the private sector major projects are now involved. It was this suggestion during the hearings of the Standing Committee which resulted in the appointment of this Commission of Inquiry, and, of course, the major focus of my terms of reference is the question of whether or not that straight-forward step is a desirable one.

33. The difficulty is that the solution raises its own unique problems.

34. Before turning to those problems may I remind the reader that I continue to examine this question on the premise that we are talking substantively only about the major power projects and not about the lines and stations or the non-Hydro segments of the sector, and, therefore, in considering the difficulties involved in integrating the electrical power systems sector with the ICI sector, I am really talking about the integration of the major power projects with the ICI sector.

The Implications of the Multi-Sector Nature of Major Power Project Work

35. The first question that comes to mind when one considers incorporating the major power projects in the ICI sector is, what is it exactly that should be incorporated? It is not only ICI sector work that is performed on Ontario Hydro's power projects. There is also Heavy Engineering Sector work, Sewers and Watermains Sector work, Roads Sector work, and Pipelines Sector work. And if the EPS Sector concept is to disappear are we not then left with the bargaining structures in each

of the other sectors becoming responsible for the labour agreements covering the work on major power projects in their respective sector? Or are we prepared to arbitrarily designate all work on major power projects as ICI Sector work? And if each sector is to be responsible for the collective bargaining in respect of its own work, can we live with the resulting situation? Are we prepared, for example, to subject the major power projects not only to the legal strike and lock-out activities of the ICI sector but also to such activities in each of the other sectors? And what about the potential that would now arise for inter-sector, bargaining rights conflicts on major power project sites?

36. These are problems to which no one I talked to seems to have paid much attention and it may be that the potential problems are in fact largely theoretical. Similar implications of the multi-sector nature of the construction industry generally do not seem to have represented serious, practical problems for the industry, perhaps because of the relatively clear nature of the differences in work characteristics amongst these other sectors and the minimum potential for serious dispute as to where one sector leaves off and another sector begins. Even under the present

arrangements governing the power projects, problems of this nature do arise and they appear to have been easily resolved on an informal basis.[7] The difficulties, however, with legislating a new structure is that specific account of such structural problems has to be taken and, in any case, subjecting the major power projects to the strike and lock-out activities in all of the sectors is not a theoretical problem only.

Potential Loss of the Favourable EPSCA Working Terms and Conditions

37. Another obvious difficulty with the incorporation of the power projects into the ICI Sector is the one that was the subject of particular attention in the deliberations of the Standing Resources Development Committee - vis., the almost certain loss of the favourable working terms and conditions in the Ontario Hydro and EPSCA agreements.[8] Theoretically, of course, it is not impossible that with the major power projects included in the ICI Sector, the employer bargaining agents in the sector might be able to negotiate new working terms and conditions in the ICI agreements similar to those now applicable in the EPSCA and Ontario Hydro agreements. But it is, in my view, unrealistic not to recognize the improbability of that happening.

It is also notoriously difficult in collective bargaining to retrieve positions previously surrendered and one must, therefore, at the best be pessimistic about the possibility of the ICI Sector employer bargaining agents ever ultimately achieving working terms and conditions comparable to what Ontario Hydro and EPSCA now have.

38. The Standing Resources Development Committee was advised that Ontario Hydro had calculated that the loss of its favourable working terms and conditions would represent an annual increase in its construction costs of about 25 million dollars. I was accorded a full opportunity to review this estimate with the Ontario Hydro personnel who did it. The estimate consists of two parts. In the first part, eight itemized areas affected by the change were analysed by a senior Ontario Hydro engineer with extensive on-site project management experience. He prepared estimates as to the additional cost that could be fairly anticipated with respect to each area in one "Bruce-size" project.

39. The specific areas considered and the amount of the estimate for each is as follows.

1. Warehousing and material handling	$ 110,000
2. Scaffolding	200,000
3. Additional supervision	1,120,000
4. Board allowance	461,000
5. Travel allowance	1,080,000
6. Shift allowance	402,000
7. Height pay	50,000
8. Industry funds	88,000
	$3,511,000

The estimate for one Bruce-size project was then converted to a total program estimate by assuming a total program equivalent to four, Bruce-size projects.[9]

40. Readers who are not familiar with the differences between the typical ICI working terms and conditions and the EPSCA working terms and conditions reflected in these various items will find a brief explanation of the differences in Appendix D.

41. It should be mentioned that the estimate is concerned only with the impact of the changed terms and conditions on the major power projects. It did not consider the lines and stations work.

42. On the basis of four Bruce-size projects this first part of the estimate then totalled approximately $14,000,000.

43. I have not thought it necessary in this report to go into the details of the estimate under each item. I am entirely satisfied that the estimates reflect a careful attempt to produce as realistic a figure as possible. A problem with all of the items, however, is the fact that not all of the data the estimates require exists so that in each case a degree of educated guessing was unavoidable. For example, in calculating the cost of introducing height pay provisions into the agreements affecting the major power projects, as might have been expected there was no data available as to the number of hours of work at height typically experienced over the course of a year on a Bruce-size project. The estimate therefore involved the engineer making an educated guess based on his project management experience as to the number of hours of such work that might be expected in each year for the number of tradesmen employed in the trades who would normally qualify for height pay. The assumption made in this case was that 1,000 men would qualify for the pay and each of them would work on the average of 50 hours each

year in situations in which they would be entitled to that pay.

44. Despite the fact that similar kinds of problems were encountered in most of the itemized estimates, I believe the estimates on these specific items can be relied upon as a reasonable indication of the extra costs that may be anticipated if the ICI terms and conditions are applied to the major power projects. In matters such as this my own experience persuades me that an educated guess by an experienced person can be relied on to fall within reasonable range of the actual fact. I am also satisfied from my meeting with the estimator that he was conscientious in the application of a conservation perspective to the estimate.

45. The second part of the estimate involves the following list of areas in which Ontario Hydro believes substantial additional costs will be experienced but for which specific estimates were not feasible.

1. Fabrication
2. Union label
3. Sub-contracting clauses
4. Additional lost time - strike activity

5. Increased administrative costs

6. Increased non-uniformity of hours of work.

46. A specific description of the differences in respect of the items on this list between the ICI terms and conditions and the EPSCA terms and conditions will be also found in Appendix E. The first three items involve additional interference with Ontario Hydro's purchasing procedures. The fourth contemplates the additional down time which would arise because of the project's exposure to what the estimate considered to be the probability of additional strike activity arising when the major power projects were included in the ICI Sector bargaining. The fifth item reflects the additional labour relations staff that would be required if Ontario Hydro were faced with the problem of participating in each of the fourteen or so employer trade bargaining agencies in the ICI Sector all of whom would be conducting negotiations at the same time. The last item reflects the fact that EPSCA has achieved on the major power projects some measure of uniformity in the hours of work between trades (the hours of work on major power projects are identical for all trades in the first four days of the week with the variations in working hours between trades being accomodated and

their impact confined to the Friday workday) which the estimate assumes would be lost if the EPSCA terms and conditions were replaced by the ICI Sector terms.

47. As will be seen, of the $25,000,000 estimate, these six items account for $11,000,000. The attribution of $11,000,000 additional costs to these items as a group cannot, by the very nature of the items involved, be considered very reliable. I have no reason to think that the $11,000,000 figure is excessive. It may well be excessively conservative. The point with these items is simply that one person's guess is as good as another.

48. There is no doubt, however, that the Ontario Hydro and EPSCA terms and conditions are substantially more favourable in all of these areas from a management perspective than the typical ICI terms and that their replacement by the ICI terms would result in significant additional costs. Perhaps the best evidence of that which I encountered was the evident value that contractors with whom I talked placed on the advantage Ontario Hydro has as a result of these more favourable terms. Whether they represent $25,000,000 a year or something more or less,

there can be no doubt that the probable disappearance of those advantages as a result of incorporating the Electrical Power System Sector into the ICI Sector is an important aspect of that proposal and one of the significant factors in the overall equation.

Ontario Hydro as Participant in the ICI Sector Bargaining

49. The next question I want to examine is the way in which Ontario Hydro would participate in the negotiations of collective agreements affecting its construction program in the circumstance where the Electrical Power Systems Sector has been incorporated into the ICI Sector.

50. Under Bill 22 the bargaining on behalf of employers is, of course, the responsibility of separate designated employer bargaining agencies in each trade. The only suggestions made to me during the course of my meetings as to the way in which Ontario Hydro could participate in those negotiations is that it would become one of the members of each of the designated employer trade bargaining agencies. One suggestion commonly made was that Ontario Hydro should simply have the status of any other contractor and

would be entitled to join each of the local contractors' associations in the areas in which its construction work was located. It could then participate with the other members of the local associations in the provincial bargaining arrangements which might or might not result in its actually having a seat at the negotiation table depending on whether or not it was selected as a delegate from one or more of the local associations. The more reasonable suggestion supported by many has been that where the designated employer trade bargaining agency is organized in the form of a council of contractors' associations, Ontario Hydro would be accorded status equivalent to that of a contractor's association and thus participate directly in the affairs of the provincial trade bargaining agency as one of possibly ten or twelve other members. I have no trouble in concluding that the first type of arrangement is not a realistic or appropriate suggestion and I am prepared to assume that something akin to the second arrangement could be worked out in each trade. But I have a fundamental question about even the second type of arrangement. The question is whether an agency that includes amongst its members both private construction companies and Ontario Hydro can be said to be a viable or appropriate bargaining agent.

51. Ontario Hydro is a prominent, highly visible, Crown corporation inescapably governed in its labour relations management by considerations of public responsibility and public policy with which private sector contractors are not concerned.

52. One illustration of how public and quasi-governmental status may affect labour relations policies can be seen in the differences between the union security provisions in the typical ICI Sector collective bargaining agreement and the agreements now applicable to the major power projects. In the ICI Sector the agreements generally provide for a closed-shop type of security whereby no person can be employed to work on the project who is not previously a union member and, generally speaking, all employees must be hired through the union.[10] The major power project agreements on the other hand, while they give priority to local union members hired through the local union hiring facilities, continue to permit the employment of local residents who are not union members.[11] They must join the applicable union within a certain number of days after being employed, but they need not be members before they can be hired. I am told by Ontario Hydro that one of the important reasons for

its resistance to union demands for closed-shop provisions is the consideration that it would not be appropriate from the point of view of public policy for a Crown corporation spending large sums of public funds on a project like say, the Pickering Nuclear Station, to obligate itself not to hire Pickering area residents unless they were union members. What ever one may think of that concern on its merits, one has to recognize its validity as an issue from a public policy perspective.

53. It is not difficult to conceive of other matters that would raise concerns of a similar nature. The so-called "union label" or "fabrication" clauses common to some of the agreements in the ICI Sector, whereby non-union plants (including foreign manufacturers) or sometimes plants organized by different unions are in effect precluded from competing for the supply of certain types of equipment or materials to ICI projects, is another obvious example;[12] union subcontracting clauses is still another.[13]

54. Furthermore, because of Ontario Hydro's dual role of owner-client on the one hand and contractor on the

other, obligations undertaken in construction industry collective agreements in its capacity of contractor may be expected to bind it as well in its capacity as owner. Thus the acceptance of a union label or fabrication clause in a collective agreement covering construction of major power projects, to take one example, would effectuate a major and permanent change in Ontario Hydro's purchasing policies relative to its capital construction program. Construction companies who become parties to similar clauses are determining only that they will contract themselves out of being able to work for owner-clients who do not wish to accept union label restrictions on their purchasing policies with respect to a particular project. These are, respectively, decisions of entirely different qualities governed by different considerations.

55. It is also not possible to overlook the fact that while Ontario Hydro is a contractor in the sense of being a major employer of construction tradesmen it is also the construction industry's most important client. Over the next ten years it will be letting 5 billion dollars worth of construction contracts.[14] Thus in its association with its fellow-members in each trade bargaining agency it will be dealing with

organizations some of whom may be already dependent upon it for some significant amount of their business and most of whom will be interested in its award of contracts in the future.

56. In its role as contractor, Ontario Hydro also has an operating premise that is materially different from the operating premise of other contractors in at least one major respect with important labour relations implications. Its operations, unlike that of a private construction company's, are not subject to the vagaries of a competitive market. Within fairly narrow limits, it can predict the volume of construction activities on major power projects over the next ten years and can determine its own share of that activity. It is therefore able to operate on the basis of long-term plans and may be expected habitually and necessarily to take a long view of any labour relations issue. Construction companies on the other hand, with the possible exception of very large and exceptionally well established industrial contractors, are by and large prevented by the nature of their business from relying overly much on long-term planning and may as a group be reasonably expected habitually and necessarily to take a much shorter view of any labour

relations issue. The possible impact ten years from now can be of relatively little interest to the majority of construction companies but can hardly be ignored by Ontario Hydro. Collective bargaining objectives and tactics are bound to vary with the degree of assurance with which one can view the future and one's place in it. Ontario Hydro enjoys a significant advantage in this regard that is sure to have its effect on the way Hydro looks at labour issues and bargaining objectives as compared to its private sector contractor colleagues.

57. The final thing that needs to be recognized about this potential relationship between Ontario Hydro and private contractors as equal members of a bargaining agency is that their respective capabilities to withstand any strike or lock-out action and therefore their basic approach to any decision concerning such possibility will be determined effectively by entirely different factors. Cash flow, loss of profits and lost business, etc. are not problems of which Hydro will have to take much account. Political pressures and the implications of threatened power supplies will not be of much concern, on the other hand, to construction companies.

58. The last potential difficulty with the proposed incorporation of the electrical power systems sector into the ICI Sector which has concerned me is whether it takes sufficient account of Ontario Hydro's need for some special and effective say in the development and management of labour relations policies effecting its construction program from the point of view of its status not as an employer of tradesmen and a contractor, but from the point of view of its status as owner.

59. Traditionally there has been no formal role for owners as opposed to employers in the bargaining structure under the Ontario Labour Relations Act. In the industrial world of course the problem does not arise because the employer and the owner are the same people. In the construction industry, however, the owner is a third party with what can be seen, I think, to be a legitimate interest in the quality of labour relations between contractors and their employees as those relationships impact on the owner's construction program. The Labour Relations Act has never recognized that interest, perhaps because in the nature of the relationship the interest is from an overall perspective typically too short-lived for it to be practicable

to permit it any effective role in the relationship.

60. But where the short-term characteristic of the interest has not been present, owners have traditionally found ways of intervening in the development and management of the relationship in order to protect that interest. The organization of multi-million dollar major projects almost always involves some attempt by the organizations investing the monies in those projects to exert some degree of control over the labour relations situation. The development of the national agreements immunizing those projects from the local labour bargaining may be traced I believe to pressures of that kind. The special labour agreement traditionally negotiated in respect of such major projects in which special premiums and beneficial long-term wage packages are exchanged for a guarantee of fixed labour costs and labour peace over the course of the project are inevitably the result of owners' initiatives. Furthermore close working relationships between owners and contractors associations in respect of the co-ordination of labour relations policies affecting major construction projects are not unknown.[15]

61. The reason for the justification of an owner's inter-

est in the quality of labour relations on his construction projects are obvious. The undisputed fact is that the quality of labour relations on a construction project can have a tremendous impact on its success as a viable investment. I have indicated in the introduction to this report my reservations as to how serious an impact legal strike activity occuring in the course of negotiations might be expected to have on major projects of this nature. But there is no doubt that illegal strike activity - wobbles, slow-downs and the like - and the kind of unsuccessful labour relations policies and administration that spawn such activities can have a really serious impact on the cost of a project and on its schedule. Horrible examples of this truth abound and one doesn't have to look very far afield to find recent examples.

62. When schedules are destroyed and costs go out of line because of an unsuccessful labour relations situation on a project it is the owner whose interests are likely to suffer the most.[16]

63. Thus when an owner is investing very substantial amounts of money over a significant period of time he must be seen to have a direct and legitimate interest in participating in the development and

management of labour relations policies in that program.

64. I think it may not be unreasonable to speculate that the degree of involvement of Ontario Hydro in the actual construction acitivity with its own forces may indeed have been influenced by the consideration that such involvement represented a way of controlling those projects from the labour relations perspective in a legislative environment that permitted an owner without such involvement no other effective role.

65. If it is reasonable to conclude that Ontario Hydro's ability to successfully discharge its responsibilities to the government and people of Ontario for the timely supply of adequate power resources can be significantly affected by the quality of the labour relations environment on its construction projects, can Ontario Hydro be expected to accept a minor role in the development and management of labour relations policies affecting those projects? Would it be in the public interest for it to do so? These are questions that any proposal for change in the present bargaining structures must confront.

FOOTNOTES TO CHAPTER FOUR

1. The EPSCA agreement has the usual no strike no lock-out clause and the parties to it are unaffected by local negotiations. But some of the work on the major projects employing trades not covered by the EPSCA agreement is affected by outside negotiations. See Chapter One, paragraph 26, page C.1-18.

2. Subject to their finding other alternative employment. See paragraphs 7 and 8 of this Chapter Four, page C.4-6.

3. See discussion of Ontario Hydro as an employer of construction workers in Chapter Two, paragraphs 14-24, pages C.2-14 to C.2-19.

4. Grievance between Local 793 and Aiton Pipework and Process Plant, Ltd., dated July 29, 1976.

5. By-law No. 1 of the Association provides that the Board of Directors conduct the business of the Association (By-law No. 1, Section 3) and act as the Association's Collective Bargaining Committee (section 19). The Board consists of two representatives of Ontario Hydro and two contractors' representatives and the President of the Association. The President has the deciding vote (section 9). The President of the Association is appointed by Ontario Hydro (section 11). As well, in the meetings of members, By-law No. 1 gives Ontario Hydro the number of votes required to equal the votes of other members present (section 18). The Chairman, who is the Hydro-appointed President (section 12), has the deciding vote.

6. For a discussion of the current contracting trend see Chapter Two, paragraphs 8 to 11, pages C.2-10 to C.2-13.

7. For example, as a matter of practice, roadwork on the major power project sites is not done under the roads sector agreement and pipeline work on the site is not done under the pipeline sector agreement, even though in both cases the scope of the agreements in question, like most collective agreements in the construction industry, do not distinguish between sectors and are therefore arguably applicable to the work on the major powers project.

8. See Appendix D for a description of the differences.

9. This is the anticipated level of construction activity in 1980, which is the time when it had been suggested the integration of the sectors might be accomplished.

10. & 11. The difference between the two approaches may be seen in the contrast between Article 4 of the current pipefitters agreement between the United Association, Local 46 and the Mechanical Contractors' Association of Toronto, and Article 7 of the current pipefitters agreement between Ontario Hydro and the United Association.

Article 4 of the M.C.A. Toronto agreement reads as follows:

" 4.1 The Contractor agrees to give preference in employment to Members of the Union having jurisdiction over the area where the work is being performed. Such Member shall have his Certificate of Qualification for the trade required, and shall present to the Contractor a Work Referral Slip issued to him by the Union.

4.2 When a Member first reports to work for a Contractor, he shall, within five (5) regular working days, give the Contractor, or his representative, the following documents:

(a) O.H.I.C. Certificate of Payment Form 104, where applicable, unless provided for in the Welfare Plan of a Union
(b) Social Insurance number

(c) and shall receive from the Contractor a Receipt as proof of receiving same no later than with his first pay.

4.3 A Contractor, who within three (3) regular working days of a request to the Union (Saturday, Sunday and Holidays excluded) does not obtain the number of qualified Members requested, shall notify the Union having jurisdiction over the area by wire that the Contractor will obtain Members from other United Association sources if available. If sufficient Members from other United Association sources are not available, the Contractor may obtain "Temporary Employees" from any other source, until such time as the Union Members are available. The Contractor shall, however, notify the Union of the name and address of each such employee.

4.4 The Contractor shall be required to maintain a minimum ratio of one journeyman over fifty-five years of age, for every five journeymen in his employ. This ratio must be maintained if such journeymen are available."

Article 7 of the Ontario Hydro agreement reads as follows:

"7.1 The Employer agrees to use employment practices and procedures which are consistent with the maintenance of good Union and Management relations. Therefore, the Employer will co-operate with the Union. To this end, the Employer agrees to notify the Union office authorized and responsible for the administration of this Agreement, in any locality involved, of its manpower requirements. If the Union is unable to supply competent members in accordance with Step 1 of Article 7, subsection 7.2 below, within seventy-two (72) hours (three working days) from the day of request, the Employer may secure additional employees in accordance with Steps 2, 3, or 4 of Article 7, subsection 7.2 below.

7.2 The Union recognizes the public obligations laid upon the Employer in recruiting its construction work force. The Employer's employment policy will be as follows:

Step 1 - Employment of competent members of the local union having jurisdiction over the project.

Step 2 - Re-employment of former employees who were terminated and whom the Employer would desire to rehire, and who are unemployed and resident in the area of work.

Step 3 - Recruitment of qualified tradesman applicants from referrals by Canada Manpower Services offices and local union offices.

Step 4 - Employment of local applicants from Project area."

12. Article 2.06 of the current Sheet Metal Workers' Hamilton agreement (Local 537) is an example of this type of clause. It reads as follows:

> "2.06 All the specified trade work which is to be installed within the area covered by this Agreement shall be fabricated within the area of this Agreement by Certified Journeymen, members of Local Union No. 537 at the rate and conditions applying to the contractors' area of Local Union 537 wherever facilities exist in the area in accordance with historically established and traditional trade practices in Local Union 537 area."

13. Article 2.05 of the Hamilton Sheet Metal Workers' agreement is an example of union subcontracting clauses. It reads as follows:

> "2.05 In the event that work covered by this Agreement is sublet by the Employer, such work shall be sublet only to other contractors who are signatory to this same Agreement with Local Union No. 537."

14. See Chapter Two, page C.2-10.

15. The recent Report of the Business Roundtable Construction Committee, Special Agreements Task Force, U.S. October,

1977, deals extensively with the subject of "project agreements" which have become a major vehicle for owner control of labour relations on special projects, and as well illuminates the extent of and reasons for owner involvement generally. See particularly pages 5 to 11 and 17 to 20.

16. Ibid., page 10.

CHAPTER FIVE

THE RECOMMENDATION

The recommendation which follows is premised on a number of conclusions reached as a result of the analysis of the problem outlined in Chapter 4. They might perhaps be appropriately referred to as the major premises of the recommendation.

MAJOR PREMISES

1. There is no doubt in my mind that any structure which reduces Ontario Hydro's role in the development and management of labour relations policies affecting its construction program to that of membership in each of the ICI provincial employer trade bargaining agencies, would be inappropriate and contrary to the public interest. I come to that conclusion on the basis of the analysis in Chapter 4 and having particular regard to,

   (a) the massive nature of the construction program in question;

   (b) Ontario Hydro's unique role as the sole owner-client responsible for the whole of that program;

(c) the serious potential that inappropriate or ineffective labour relations policies have for the disruption of such a program; and

(d) the extent to which a successful and efficient prosecution of that program can be said to be central to Ontario Hydro's ability to discharge its responsibility to the government of Ontario and to the people of Ontario for the timely and sufficient supplies of electrical energy. [1]

2. I am also of the view that such a structure is unsound from the narrower perspective of good labour relations policy. It is apparent to me that the contractors, individually and as a group, have very little in common with Ontario Hydro on most matters that are relevant to the hard decisions that an employer bargaining agency will have to make when the chips are down. They have different responsibilities, different objectives, different interests and in strike or lockout situations will be influenced by materially different considerations. Furthermore, Ontario Hydro's other role as the construction industry's most important customer is obviously incompatible with any role as just another member of an employer bargaining agency. It seems to me more than probable that with such a structure, on any issue of substance, either Ontario Hydro's special interests will be effectively submerged by the majority

of contractors or its views will prevail because of its size and its inherent position of influence. Were it to so prevail on an issue where its position led to a strike or lockout, how long could one realistically expect the contractors, particularly the smaller contractors, to support the agency in that strike or lockout activity? Furthermore, the bargaining relationship between an employer agency, which has as one of its members Ontario Hydro, and its union counterpart agency will be inevitably unsettled, in my opinion, by the speculation on the part of the union and its members as to the extent to which the employer bargaining agency's bargaining positions in fact reflect the views of the contractors and the extent to which they are really being "imposed" by Ontario Hydro. In short, I do not believe that a bargaining agency which has in it both contractors and Ontario Hydro could be said to be an appropriate or viable bargaining agent.

3. It is self-evident that it is not in the interests of good labour relations in the construction industry that the ICI and EPS sectors continue the degree of independence that presently prevails. Any structure devised must go as far towards integrated negotiations in the two sectors as the first two major premises will permit.

4. Bargaining which affects the employees of private contractors should take place in a structure which gives such contractors, and particularly those contractors in the trade affected, a dominant role in the negotiations.

5. It is important with respect to major power projects to minimize the number of applicable collective agreements; to avoid, if possible, situations in which two different agreements covering the same trade doing the same type of work are applicable, and to encourage the evolution of more standard contract conditions between trades.

6. It is essential to dispense with the possibility of overlapping collective agreements - that is, two agreements with different terms but between the same parties and covering the same employees.

7. It is important to interfere as little as possible with existing bargaining relationships.

8. The ideal objective of any bargaining structure is the creation of bargaining relationships that reflect actual economic relationships and the facilitating of problem-solving by the parties themselves through those relationships.

9. The multi-sector nature of the work on a major power project is a potential source of difficulties which any proposed structure must resolve.

PROPOSAL

Need for Two Separate Sectors

1. I have found it impossible to think of a structure which would satisfy my major premises and at the same time encompass an outright merger of the Electrical Power Systems Sector with the ICI Sector. I believe the following proposal will facilitate most of the objectives with which the proponents of the merger of the two sectors are concerned but it involves the continued existence of at least the Hydro part of the Electrical Power Systems Sector.

Definition of Public Power Sector

2. I begin, therefore, with a proposal for a modification and specific definition of the Electrical Power Systems

Sector. I propose, first of all, removing from the sector the construction of privately-owned generation, transformation, transmission and distribution facilities and, as well, all municipal construction of transformation and distribution facilities. The question of what bargaining structure should then be established for these components of the industry obviously arises and it seems to me there are two possibilities: (1) that they be absorbed into the ICI Sector, or (2) that they be treated as a new sector. My inquiry has not focused on the nature of the bargaining relationships in that part of the present sector and I am not in a position to make a firm recommendation in that regard. What I have learned, however, suggests that there are established and unique bargaining relationships and special collective agreements in that part of the industry and there may well be justification for simply recognizing it as an additional, separate sector - perhaps the "Utilities and Private Power Sector".

3. Next, by legislation define the Electrical Power Systems Sector specifically as follows:

> "All construction industry work performed in the Province of Ontario on Ontario Hydro property save and except the building of commercial-type office facilities at urban locations remote from operating facilities.
>
> For purposes of clarity the sector shall be deemed not to include any construction of transmission, transformation, or distribution facilities on the community side of the main secondary bus-bar of municipal transformer stations."

4. The clarity note is designed to deal with what I anticipate may be a problem in using the concept of Ontario Hydro property as the distinguishing feature when it comes to determining whether work is part of the municipal construction of electric power facilities or part of the newly defined sector. I thought it reasonable in this area to define the point where the Electrical Power Systems Sector ends and the municipal-type work begins without regard for property rights, and the main secondary bus-bar of a municipal transformer station happens to be the place where the line has been drawn in the past between the responsibilities of Ontario Hydro for the development of bulk power and the mainly retail functions of the municipalities.[2]

5. I think it might be appropriate then to change the name of the sector and I would recommend calling it the "Public Power Sector".

6. It should be emphasized that the definition of the sector in terms of all construction industry work is deliberately designed to avoid hereafter the necessity, or the potential necessity, of distinguishing bargaining rights on major power projects between various sectors. Accordingly, work in every sector when it is done on Ontario Hydro property (and is not within the exception) becomes public power sector work for purposes of determining and exercising bargaining rights.

Bargaining Structure

7. With the sector thus defined, I now turn to the question of bargaining structure. At this point I will attempt to describe the proposed structure in terms of what it should look like two or three years hence. The transition problems are not insignificant but I will deal with them later. (See Chapter 6).

8. The bargaining agents on the employees' side will be organized on a trade-by-trade basis or on a part trade-by-trade and part multi-trade basis, as the unions in each trade decide. A provincial employee bargaining agent will be designated (in accordance with the same type of procedure as that specified in Bill 22) for the Public Power Sector for each trade or groups of trades as the case may be. The option to organize a multi-trade employee bargaining agency on the union side needs to be left open in order to give to the unions now involved with the Ontario Allied Construction Trades Council the right to continue with that organization as their common bargaining agent. The unions who are not now participating in the council will be free to continue bargaining independently on a single trade basis if they see fit. In the case of unions bargaining independently, I would anticipate that the provincial bargaining agent designated for bargaining in the Public Power Sector would probably turn out to be the same agency as was designated to bargain in the ICI Sector and that the designation for the council trades would likely be the Ontario Allied Construction Trades Council.

9. The employers' side of the bargaining structure is more complicated. I propose that there be two kinds of bargaining units designated by legislation for the Public Power Sector. One type of bargaining unit would relate to Ontario Hydro employees only and I would refer to that part of the sector as the "Hydro side" of the sector. The other kind of units would relate to employees of private contractors and I will refer to that as the "contractors' side" of the sector. A typical bargaining unit on the Hydro side would be defined as follows:

> "All carpenters employed by Ontario Hydro on Public Power Sector work ...".

The typical bargaining unit on the contractors' side would be defined as follows:

> "All carpenters employed by Company X and employed on Public Power Sector work ...".

10. Ontario Hydro would be designated as the employer bargaining agent for all of the Hydro-side bargaining units.

11. On the contractors' side, I would propose the establishment of a council of designated employer trade bargaining agencies with a voting system weighted heavily in favour of each trade bargaining agent member in matters affecting its trade. The council might be called the "Public Power Contractors Council" (the "PPC Council"). The concept of an all-contractors labour relations organization is, it may be noted, one that is not unfamiliar to the industry in the context of major projects. The St. Lawrence Power Project Labour Relations Association is one successful example that has come to my attention.

12. The PPC Council would be the entity with the exclusive right to exercise the bargaining rights of all contractors working in the Public Power Sector. Its membership would consist of each of the designated employer trade bargaining agents in the ICI Sector plus one or more designated employer bargaining agents from each of the Sewers and Watermains Sector and the Heavy Engineering Sector.

13. The need to include in the Council, representatives from non-ICI Sectors arises from the fact that the Public Power Sector includes not only work that is indistinguishable from ICI work but also work that is identical to the work of other sectors, much of which is currently, under the present arrangements, performed under the special collective agreements generally pertaining to those sectors. Examples that come readily to mind are, excavation work, sewers, tunnelling, dam construction, etc. This requirement of multi-sector representation in the bargaining on the contractors' side is one of the things that makes the Council concept important.

14. The multi-sector complication does not, in my opinion, require any corresponding structural adjustment on the union side. From the union perspective, inter-sector disputes will be typically intra union matters. Should an operating engineer employed on a major power project be working under the Public Power Sector's general agreement covering operating engineers or under its special agreement covering operating engineers on excavation work? is the typical question which will arise. A union may want to include in its trade bargaining agency

designated for the Public Power Sector, representation from locals with special interests in the other sectors who are not part of the union's trade bargaining agent in the ICI Sector. But apart from adjustments of that kind, I would not expect the multi-sector aspect of the situation to be a problem from the point of view of union bargaining representation.

15. My recommendations with respect to the representation of contractors in the non-ICI Sectors must be regarded as particularly tentative. As indicated earlier, the concerns about the separate status of the Electrical Power Systems Sector emanated primarily from ICI Sector contractors and unions. And during the meetings that I held I was not particularly concerned about the other sectors nor did I hear representations or receive briefs from those sectors. The information that I have about the practices and situations prevailing in those sectors is therefore information that I received for the most part only incidentally. I have the impression, however, that as a matter of practice, the pipeline sector agreement (and I understand that in that sector there is only one agreement - a national pipeline agreement) has not been applied on major power project sites. Pipelines that are built

onto those sites are built under the Pipeline Sector agreement up to the property line and from there under the ICI-type agreements (EPSCA or the independent agreements as the case may be). I am also advised that the construction of roads within the property line is not usually done under the collective agreements normally prevailing in the Roads Sector. If my information is correct, then it would be reasonable in the interests of simplification to omit the Pipeline Sector and the Roads Sector from participation in the Council. Furthermore, it seems evident that the Residential Sector has no interest in the major power projects and accordingly that sector too could be reasonably omitted.

16. It is also my impression that in the other sectors there are typically only two or three of the trades that negotiate separate agreements for those sectors. Other trades typically bargain all-sector agreements. I believe this is true, for example, with respect to the United Association and is also true with respect to the IBEW. It may be, therefore, that in these two sectors effective employer representation might be achieved on some basis other than the straight trade-by-trade arrangement in the ICI Sector. In any event, the

nature of the employer bargaining agents to be designated from those two sectors I would leave to be decided by the Ministry of Labour after full consultation with the parties involved. The subject of whether or not the Roads or Pipeline Sectors should be represented in the Council should also be a matter for subsequent consultation.

Joint Negotiations

17. I come then to what I consider the keystone of the proposal: the concept of joint negotiations on the employers' side. I am proposing that all collective agreements in the Public Power Sector should be required to be three - party agreements: between the designated employee trade bargaining agent on the one hand (which as I have indicated may be a multi-trade agent or a single-trade agent) and Ontario Hydro and the Council of Public Power Contractors on the other.

18. The concept envisages Ontario Hydro and the Council of Public Power Contractors, each exercising independent bargaining rights in respect of the bargaining units

on the Hydro side and the contractors' side of the Sector respectively, joining together as equal partners to negotiate with each of the designated employee trade bargaining agents the agreements that will cover Public Power Sector employees. This concept ensures an effective say in the development of labour relations policies and the negotiation of agreements affecting the Public Power Sector for both Ontario Hydro and the Contractors by in effect giving each a veto over the other as to the terms and conditions accepted on the employers' side for any Public Power Sector collective agreement.

Agreements Affecting the Public Power Sector

19. To protect the integrity of the bargaining structure and to ensure no overlapping agreements, the legislation should provide that the only valid collective agreements in the Public Power Sector are ones which meet the following conditions: (a) the parties are the appropriate designated employee trade bargaining agent, Ontario Hydro and the Public Power Contractors Council; (b) the agreement covers all the employees in a trade (or in a number of trades, as the case may be), whether employed by contractors or Ontario Hydro, who are employed on work within the trade anywhere in the sector, and (c) the agreement does not

cover employees in any other sector. The provision, however, must permit more than one such agreement per trade in order to accommodate the multi-sector problems and allow special agreements in respect of different kinds of work within a particular trade.[3]

Common Expiry Dates with the ICI Sector

20. It will be appreciated that the participation of substantially the same employee and employer trade bargaining agents in the bargaining in the ICI Sector and in the Public Power Sector will encourage integrated bargaining between the two sectors. To further assist that process I would recommend that the agreements in the Public Power Sector be required to have the same common expiry date as that prescribed in the ICI Sector.

Ratification Voting Procedure

21. The separation of the ICI Sector from the Public Power Sector raises problems with present ratification voting procedures on both sides of the table which must be addressed. Take the union side first. As

previously discussed,[4] as things now stand it is the practice of most unions to submit agreements for ratification to membership votes in which all members of the union or local in question are entitled to vote whether or not they are personally employed on construction work that will be shut down if no agreement is reached. As I indicated earlier, I do not subscribe to the view that voting procedures which included nothing-to-lose votes played a fundamental role in the bargaining difficulties that the local contractors' associations experienced prior to Bill 22. In my view these difficulties are more likely simply to have reflected the membership's clear understanding of the bargaining position the union was in where most of its members had alternate employment opportunities. It is also apparent that the voting procedure is not a <u>crucial</u> matter when one looks at it from the perspective of the ICI Sector province-wide negotiations having regard to the relatively small percentage of the province-wide membership in a particular trade union that would be employed in the Public Power Sector as compared to the number working in the ICI Sector.

22. The problem, however, takes on a markedly different aspect when one considers it from the perspective of bargaining in the Public Power Sector. Once it is appreciated that if the existing procedures followed by most unions in the ICI Sector were applied to the Public Power Sector negotiations it would mean that the decision to strike all the major power projects in the Province would be taken on the basis of a vote of union members of which only some small percentage - not higher than 10% - 20% and in most trades much smaller than that - would be actually affected by the strike action, it becomes immediately apparent that it is not an acceptable procedure. It is also a fact that whatever may be the truth as to the actual distortion of a union's bargaining position caused by nothing-to-lose votes, the existence of any substantial number of such votes does have a substantial negative impact on the viability of the bargaining structure because of the doubt that it creates in the minds of the employers as to the legitimacy of the vote results. Voting procedures that produced the above results would, in my opinion, simply destroy the viability of the Public Power Sector bargaining structure.

23. I, therefore, find it necessary to recommend that the new legislation require that the right to vote on ratification of collective agreements in the Public Power Sector be confined to members of the unions in the trades affected who are at the time of the vote employed in that sector.

24. As I have previously indicated, I am aware that some unions already make their voting arrangements on the basis of this principle and I would note that the Building and Construction Trades Department AFL-CIO suggested a similar principle in its brief to the Franks' Commission.[5]

25. The voting problem on the employers' side is not much different as it is obvious that employers who have active construction contracts and people on their payroll who would be affected by a strike or lockout will be far more interested in bringing about an early settlement than will employers without active work who are free to be as tough as they like without risk of economic hardship. It would be equally intolerable from a public interest point of view to have all of the major power projects in the Province shut down on

the basis of an employers' vote involving any significant number of contractors who have no work on those projects and vote with no personal economic risk. The legislation should also therefore provide that the ratification procedures of the Public Power Contractors' Council and of the individual employer trade bargaining agent members of the Council should not permit the vote of any contractor who is not actively engaged in construction work in the Public Power Sector at the time of the vote.

26. It should be mentioned that in connection with both the unions' and the employers' voting procedures, the voting restrictions should apply only with respect to votes that directly decide whether or not a strike or lockout action is to commence or continue. Decisions about bargaining strategies and objectives during the planning of negotiations and during the course of negotiations need not be affected by such restrictions. Neither should voting restrictions interfere with any general delegation of ratification powers to a bargaining agent organization prior to commencement of negotiations. Thus if the employer trade bargaining agent member involved in a particular negotiation is itself authorized to make a ratification decision

without polling its members, the voting restrictions should not be a factor. The voting restriction should apply only in those situations where the strike or lockout decision is being made by a vote of individual members of a union or of individual contractor members of a trade-bargaining-agent member of the PPC Council.

Public Power Contractors Council -
Vote Weighting in Favour of Trade Bargaining Agent Member

27. The constitutional arrangements required to give an individual trade bargaining agent member a dominant role in determining the Council's position on any matter affecting its trade, is the next question. There are obviously any number of ways of going about this and I am here simply making one suggestion. I would propose a provision in the constitution of the PPC Council whereby the Council's position on any issue of special interest to any particular trade shall be determined by the employer trade bargaining agent member concerned subject only to that member being able to get support for its position on the particular issue from at least four of the other employer trade bargaining agent members (there will presumably be about 20 members). Where

such support is not forthcoming then the Council's position would be determined by a majority vote with each member having one vote.

28. The reason I recommend that the Council's position is only to be determined by the employer trade bargaining agent member affected in the case where that member can obtain support from four other members is that because of the largely integrated multi-trade work forces employed on major power projects other members of the Council do have a legitimate interest in the extent to which any one trade agreement in the Public power Sector differs noticeably from the other trade agreements; certainly in the area of wages and benefits but also in the area of working terms and conditions. Accordingly, it seems to me that there should be some degree of restraint built into the constitution of the PPC Council to ensure that a particular member must have some measure of support within the Council before it can take the Council in a different direction in respect of its trade than what the majority of the Council members would consider desirable.

Resolution of Inter-Sector Questions

29. In the case of an inter-sector dispute amongst members of the PPC Council- for example whether the sector's

heavy engineering type operating engineers' agreement or its general operating engineers' agreement should cover the construction of say a bridge on a site road - I would propose the Council not take a position but leave the dispute to be worked out if possible through the various Council members whose trades are directly involved joining in direct negotiations with Ontario Hydro and the affected employee trade bargaining agents. In the event that that process produces no agreement acceptable to all, then the employer position for the sector should be determined by the procedures in force for resolving between the PPC Council and Ontario Hydro the employers' position in any contract administration dispute (see below),[6] with each concerned Council member entitled to carry his side of the dispute through those procedures. The reason for not leaving the Council's position in an inter-sector dispute to be determined by majority vote or something of that nature is that it is impossible, or at least in my view unduly cumbersome, to create a Council that is evenly balanced in overall perspective amongst the various sectors. Obviously, as a practical matter the Council is likely to be dominated in point of numbers by ICI Sector bargaining members.

Financing of the PPC Council

30. The financing of employer trade bargaining associations has been always a troublesome problem. Contractor membership's fees have apparently never proved to be a realistic source of adequate funds for the purpose. And the typical "industry fund" provisions in modern construction industry collective agreements which require each employer to contribute a specified amount for each hour worked by every employee covered by the agreement, while they may be the best arrangements possible in the absence of specific legislative intervention, leave the employer bargaining agent in a somewhat ambiguous position in its relationship with the union. Its effectiveness as an organization is by such arrangements ultimately dependent upon the amount of industry funds to which the union will agree and is in jeopardy during every negotiation.

31. It is important that the PPC Council be assured of adequate financing in a manner which does not leave it dependent upon the discretion of any of the other parties to the bargaining process. And I would recommend that the legislation provide that any contractor engaged in Public Power Sector work must pay

a labour relations fee to the PPC Council (to be recoverable in the price of the contract the same as other costs); that the fee shall be a specified amount for each hour of labour employed by the contractor in the sector; that it shall be deducted from each installment payment of the contract price by Ontario Hydro; that the amount of the fee shall be fixed by the PPC Council and may be changed as required by the Council; that the amount of the fee shall be such as is reasonably required to fund the necessary and desirable labour relations activities of the Council, including costs and expenses of each employer trade bargaining agent member reasonably attributable to their participation in the Council's affairs; that the receipt and utilization of the labour relations fees shall be subject to annual audit by independent auditors acceptable to Ontario Hydro who shall report on the audit both to members of the Council and to Ontario Hydro; and that the amount of the fee be subject to challenge by Ontario Hydro at any time by application to the Labour Relations Board for an order reducing the amount of the fee, with the PPC Council having the burden in such proceedings of justifying the amount.

Integration of ICI Sector and Public Power Sector Negotiations

32. The common expiry dates and the participation of many of the same or similar bargaining agencies in both negotiations seems likely to result in a fair degree of natural integration between the bargaining in the two sectors. To assist the process of integration the possibility of a direct connection between the two sectors in any particular set of negotiations should be left open. The ICI Sector employer bargaining agents and the PPC Council and Ontario Hydro will be free to agree amongst themselves that in respect of a particular set of negotiations they will pursue a joint bi-sector negotiating strategy. On the union side the same possibility would be open and perhaps even more easily implemented since the identity between the bargaining agents on the union side in the two sectors will be more complete. It seems desirable to me that if the parties on either side of these two sets of negotiations feel in a particular case that it is in their best interest to attempt to combine them, they should not be discouraged in that attempt, recognizing, of course, that the parties on the other side of the negotiations may take a different

view and will equally be free to resist such a strategy. The free election by the parties on one side or other of the negotiations in the two sectors, of a joint bi-sector strategy in respect of any particular set of negotiations and the successful prosecution of that strategy is probably the most constructive integration process that one could devise. It appears, however, at least possible, given the separate and independent bargaining rights being exercised in each sector, that a joint strategy - the refusal, for example, by an employee trade bargaining agent to sign an agreement in the ICI Sector until its counterpart agency in the Public Power Sector had achieved the same terms and conditions in the negotiations there - might be treated as a failure to bargain in good faith. I would therefore recommend that the legislation provide that pursuance of a joint strategy between the two sectors would not constitute a breach of section 14 of The Labour Relations Act.

Administration of Collective Agreements in the Public Power Sector

33. All the foregoing has been focussed on the negotiation of collective agreements in the Public Power Sector. I turn now to the problem of the administration of collective agreements in the Public Power Sector.

34. It seems self-evident that in the context of a construction program that involves extensive use of a multi-trade, integrated work force over long periods of time on similar or identical work, where the unions involved with the agreements remain the same, where Ontario Hydro involvement in the management of the projects and in the negotiation of the agreements is a constant factor, where the PPC Council's involvement in the negotiations of the agreement is a constant factor and where the only variable element in the relationships is the identity of the contractor employer, a co-ordinated and consistent approach to the employer administration of collective agreements is essential.

35. I therefore recommend that the agreements in the Public Power Sector be centrally administered. Obviously, any sophisticated administration procedure will have to provide ample opportunity for effective participation by the individual employers concerned but the procedure should be such that ultimately, on issues of principle each union can expect the same management interpretation of its agreement whether the question arises at the Bruce Power Development Project location or at

Wesleyville and regardless of who the employer happens to be, and that in those cases where there are contractual provisions that are identical as between trades that the same interpretation will be pursued on the management side in respect of each trade. I propose that these decisions be the joint responsibility of Ontario Hydro and the PPC Council in the same way that the negotiation of their agreements is their joint responsibility.

36. Joint administration is different in one essential respect from joint negotiations. In joint negotiations of a collective agreement a "no-position" result from the joint process will be a viable result in negotiations since it will be translated as a refusal to agree, but in a dispute over the administration of an agreement the employer side must ultimately have some position on the issue. It is necessary therefore to devise an impasse-resolution procedure for administration-type issues.

37. I am confident Ontario Hydro and the PPC Council will be able to agree on some suitable arrangement in that regard. My own suggestion would be a standing Board of Referees consisting of two nominees from both Ontario Hydro and the PPC Council respectively and chaired by a fifth person jointly appointed by the two parties.

FOOTNOTES TO CHAPTER FIVE

1. For an authoritative review of the nature of Ontario Hydro's responsibility see the Task Force Hydro, Report Number One, dated August 15, 1972. This is a report of a Task Force established by the Committee on Government Productivity to review the function, structure, operation, financing and objectives of what was then the Hydro-Electric Power Commission of Ontario.

2. Ibid., Recommendations 1.24, page 56.

3. The proposal as written insists on both Ontario Hydro employees and contractors being covered by the same agreement. This eliminates the conflicting side-by-side agreements. It will result, however, in a serious confrontation when in the negotiations with the independent unions, the question of whose existing working terms and conditions are to prevail is addressed. For example, to put it baldly, either the U.A. will have to agree to the disappearance of its union label provision on major power projects or Ontario Hydro will have to abandon its opposition to such clauses. It is arguably desirable to provide ways of avoiding such head-on confrontations and one possibility would be to make room for Public Sector agreements that covered only Ontario Hydro employees or only contractors' employees (but in either case still requiring Ontario Hydro and the P.P.C. Council to be parties to the agreement). With a provision of that nature, the parties would be free to elect the status quo rather than face up to resolving some of these issues. The likely result, however, would be a continuation of a number of conflicting side-by-side agreements. I have chosen in my proposal the harder route which will ensure a rational agreement structure but at the expense of very difficult negotiations. The other choice, however, is open without affecting the viability of the bargaining structure, and I recognize that there may be valid practical reasons for preferring it.

4. See Chapter Four, paragraphs 4 to 6, pages C.4-3 to C.4-5.

5. Dated January 30, 1976, at page 12.

6. Page C.5-28.

CHAPTER SIX

TRANSITIONAL ARRANGEMENTS

Timing

1. It seems obvious to me that if the arrangements I have outlined were accepted as government policy they could not realistically be implemented in time for the spring, 1978 round of negotiations. They depend upon the existence of stable provincial employee and employer trade bargaining agencies in the ICI Sector and the participation by such agencies in the creation of a Public Power Contractors Council and upon the working out of internal negotiating structures and the details of constitutions and by-laws and the development of common negotiating strategies in respect of the Public Power Sector in what will be novel circumstances for everyone. From what I have seen in talking with the various people who have met with me, most of whom are deeply involved in the changes necessary in the ICI Sector under Bill 22, it seems apparent that it is impossible to expect these new bargaining institutions to get through the throes of establishing themselves for the purposes of ICI Sector bargaining while at the same time developing a capability for bargaining in the Public Power Sector. Furthermore,

the complexity of the first round of negotiations under Bill 22 is almost overwhelming by itself and the prospect of adding new negotiations in the closely-related Public Power Sector at the same time is not one, I believe, that anyone would welcome.

2. When those considerations are coupled with an appreciation of the time that will be necessary to develop and enact the legislative amendments that would be required to implement these recommendations, it is obvious that the spring of 1978 as a starting time is simply not a practical suggestion.

3. I would propose the spring of 1979 for the first round of negotiations in the Public Power Sector.

Extension of Existing Agreements

4. It must be recognized, however, that the pending creation of the kind of structure I have described will have an inevitable impact on some of the negotiations in the ICI Sector in 1978. I refer to the fact that in the first round of negotiations under the new structure in the Public Power Sector there will be a number of unions - those not involved in the Allied Trades Council - who will be faced with the prospect of negotiating one

common set of working terms and conditions applicable to the Public Power Sector in the circumstances where they now have two sets of such terms and conditions applicable to major power projects (one set negotiated directly with Ontario Hydro and one set negotiated locally which is applicable to contractors' employees on the major power projects).

5. From a bargaining strategy point of view one can anticipate a push by such unions to strengthen their ultimate bargaining position by making a strong effort in the ICI Sector negotiations in the spring of 1978 to strengthen the working terms and conditions in their ICI Sector agreements, as those agreements would become one of the platforms from which the new common set of working terms and conditions will be negotiated.

6. In the interest of minimizing as much as possible, any artificial bargaining pressures in the 1978 ICI negotiations, I would recommend that the legislation defining the new Public Power Sector, etc., be implemented as soon as possible; that all existing collective agreements which now apply to construction work in the part of the Electrical Power System Sector that will become the Public Power Sector (including all local agreements of the independent unions) be deemed by the legislation to

continue in existence to the extent that they apply to such sector until April 30, 1979, except only for an automatic amendment, effective the effective date of the new ICI agreement in the trade in question, picking up the wage package won in the ICI Sector in the 1978 round. (By "wage package" I mean that part of the agreements in respect of which it is EPSCA's and Ontario Hydro's current practice to simply adopt local terms).

7. A further transitional provision would stipulate that the Public Power Sector agreements negotiated in 1979 would adopt the then existing wage package (the ICI 1978 package) and provide for a common expiry date of April 30, 1980.

8. The result would be that the first round of negotiations in which both sectors would be simultaneously involved in negotiating both wages and benefits and working conditions would be the spring of 1980.

9. The effect of such provisions would be to freeze the working terms and conditions part of the collective agreements as they apply to the Public Power Sector until the

first round of negotiations in the spring of 1979 and to confine that first round of negotiations to those conditions.

10. In the meantime, the PPC Council could get itself organized and at some intermediate date perhaps by September 1 of 1978, the transfer of bargaining rights to the Council and the substitution of the Council and Ontario Hydro as joint parties in place of each of the employers or other employer representative in the existing agreements could be accomplished and the operation of the new structure commenced.

Creation of the Public Power Contractors Council

11. The PPC Council will be primarily a private organization and it is awkward and really inappropriate, therefore, to legislate it into existence. I would therefore recommend that the legislation be permissive in this respect - providing the opportunity for an organization meeting such and such minimum requirements as far as its constitution is concerned to acquire the rights contemplated for the PPC Council. To protect the integrity of the structure in the unlikely chance that the employer trade bargaining agencies in the ICI sector will not be interested in organizing such a council, I would suggest

a back-up provision whereby in the absence of such an organization Ontario Hydro would assume the duties and rights of the PPC Council.

12. A similar kind of provision should be developed to deal with the situation where the PPC Council is formed but one or more of the ICI employer trade bargaining agencies elects not to participate.

All of which is respectfully submitted at Toronto, Ontario, this 31st day of January, 1978.

S. R. Ellis,
Electrical Power Systems
Sector Inquiry Commission.

APPENDIX A

Ministry of Labour

APPOINTMENT

WHEREAS in and by section 34 of Chapter 232 of The Revised Statutes of Ontario, 1970, as amended by 1975, Chapter 76, entitled "The Labour Relations Act", the Honourable Minister of Labour may establish an industrial inquiry commission to inquire into and report on any industrial matter that she considers advisable;

AND WHEREAS The Honourable Minister of Labour deems it to be in the public interest to cause inquiry to be made concerning the matters hereinafter mentioned;

NOW, THEREFORE, pursuant to the authority vested in me, I hereby appoint S. Ronald Ellis, Toronto, to act as an industrial inquiry commission to inquire into, report upon and make recommendations to me concerning the extension or application of Bill 22 entitled The Labour Relations Amendment Act, 1977, passed at the First Session of the thirty-first Legislature of Ontario, to the electrical power systems sector of the construction industry referred to in clause e

APPENDIX A (cont'd.)

of section 106 of The Labour Relations Act, including and without limiting the generality of the foregoing;

(a) the feasibility of the merger of the electrical power systems sector with the industrial, commercial and institutional sector;

(b) the desirability of the retention of multi-trade bargaining, as opposed to single-trade bargaining, in the electrical power systems sector; and

(c) the process of, and timing for, such extension, application or merger, if the same be recommended;

(d) generally, any matter in relation to the foregoing which in the opinion of the commission is relevant to the foregoing.

And I request that the commission report to me not later than the 31st day of January, A.D. 1978.

DATED at Toronto
this 1st day of
November, 1977.

Minister of Labour

APPENDIX B

CONDUCT OF INQUIRY

A. Proceedings

November 1, 1977	- Appointment of Commission
November 1 to November 17, 1977	- Organization and preliminary orientation.
November 17, 1977	- General orientation meeting at the Constellation Hotel with the technical advisers to the Commission.
November 28 to December 1, 1977	- Organization of first round of meetings.
December 6, 1977	- Meeting at the Ministry of Labour with Mr. D. E. Franks.
December 12, 1977	- Meeting at Osgoode Hall Law School with the following representatives of the Construction Labour Relations Association: Mr. Claude Heywood, President Mr. J. Watson, General Contractors Association Mr. W. Jemison, Ontario Erectors Association
December 13, 1977	- The Electrical Power Systems Sector Inquiry Notice to the Construction Industry Published in the Daily Commercial News*.

*See attached copy of Notice.

December 13, 1977 - Meeting at Osgoode Hall Law School with the following representatives of Ontario Hydro:

Mr. S. Horton, Director of Generation Projects Division
Mr. Marino Fraresso, Director of Stations. Transmission and Distribution Division
Mr. O. T. McCarthy, Manager, Lines and Stations Construction Department
Mr. H. E. Skelton, Senior Methods Engineer, Lines and Stations Construction Department
Mr. A. D. Allin, Director of Staff Relations
Mr. Glenn A. Pickell, Manager, Construction Labour Relations
Mr. William S. O'Neill, Senior Construction Labour Relations Officer

December 14, 1977 - Meeting at Osgoode Hall Law School with the following representatives of Combustion Engineering Superheater Limited:

Mr. J. R. Marchant, Manager, Construction Services
Mr. Kendall, Labour Relations and Safety Assistant

December 15, 1977 - Meeting at Osgoode Hall Law School with Mr. H. W. Ingham, International Representative, International Union of Operating Engineers.

December 16, 1977 - Meeting at Osgoode Hall Law School with Mr. Henri Schueler, Business Manager, I.B.E.W. Local 1788

December 16, 1977 - Inquiry Notice to Construction Industry published again in the Daily Commercial News.

December 19, 1977 - Meeting at Osgoode Hall Law School with Mr. S. Sosin, President, Interior Systems Contractors Association of Ontario and with Mr. K. Weller, Business Agent, Lathers' International Union, Local 562.

December 20, 1977 - Meeting at Osgoode Hall Law School with the following representatives of the Mechanical Contractors Association Ontario ("MCAO"):

Mr. D. Knox, Acting Executive Vice-President of MCAO
Mr. J. McCarron, Director of Labour Relations, MCAO
Mr. M. Knell, Chairman of MCAO Labour Relations Committee
Mr. R. Fraser, Manager, MCA, Kitchener
Mr. F. Whyte, Executive Director of MCA, Hamilton

December 20, 1977 - Third publication of Inquiry Notice in the Daily Commercial News.

December 21, 1977 - Meeting at Osgoode Hall Law School with the following representatives of the Ontario Allied Construction Trades Council:

Mr. J. M. Carruthers, President of OACTC and International Representative, Carpenters
Mr. D. McIntyre, Business Manager, OACTC
Mr. G. Flook, International Representative, Labourers
Mr. H. Ingham, International Representative, Operating Engineers
Mr. J. Kennedy, Business Manager, Operating Engineers, Local 793
Mr. A. Kirton, International Representative, Insulators and Asbestos Workers
Mr. C. Lacombe, Business Agent, Local 230, Teamsters Union
Mr. A. Mariano, International Representative, Operative Plasterers and Cement Masons
Mr. A. Cardoso, Business Agent, Local 598, Operative Plasterers and Cement Masons
Mr. G. Balanzin, Business Agent, Local 598, Operative Plasterers and Cement Masons

December 22, 1977 - A.M. Meeting at Osgoode Hall Law School with the Boilermakers' Union represented by:

Mr. J. Carroll, International Vice-President
Mr. S. Petronski, Business Manager, Local 128
Mr. J. DuChesnay, Business Representative, Local 128

December 22, 1977 - P.M. Meeting at Osgoode Hall Law School with Mr. J. Kennedy, Business Manager, Local 793.

January 3, 1978 - Meeting in Montreal with Mr. J. Y. Gagnon, General Manager, James Bay Employer Association. *

January 4, 1978 - Second Meeting with CLRAO at CLRAO offices on Airport Road. CLRAO representatives:

Mr. C. Heywood, President
Mr. J. Abson, CLRAO
Mr. W. Jemison, Ontario Erectors Association
Mr. T. Westley, Industrial Contractors' Association
Mr. W. J. Gibson, Boilermakers Contractors Association

January 5, 1978 - Second Meeting with Ontario Hydro at Hydro offices on University Avenue. Representatives:

Mr. A. D. Allin, Director of Staff Relations
Mr. Glenn A. Pickell, Manager, Construction Labour Relations
Mr. William S. O'Neill, Senior Construction Labour Relations Officer
Mr. O. T. McCarthy, Manager, Lines and Stations Construction Department
Mr. J. P. Stoyan, P.Eng.

January 6, 1978 - Meeting at Osgoode Hall Law School with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry. Representatives:

Mr. R. J. Watson, International Representative
Mr. W. Howard, Business Manager, Local 46
Mr. J. Porter, Business Manager, Local 527

January 12, 1978 - Meeting at Osgoode Hall Law School with the International Brotherhood of Electrical Workers. Representatives:

Mr. K. G. Rose, International Vice-President

* See Paragraph 2, Section E below.

Mr. J. McInnis, International Representative
Mr. F. Collins, Business Manager, Local 530 and Chairman of the U.A. Ontario Provincial Council
Mr. R. Tersigni, Business Manager, Local 804

January 16, 1978 - Meeting with Mr. D. E. Franks at Ministry of Labour.

January 20, 1978 - Meeting at my home (in a snowstorm) with Dr. G. Möller, Consultant Manager of Hamilton District Sheet Metal Contractors Inc.

January 23, 1978 - Meeting at Osgoode Hall Law School with technical advisers Eayres and Wilson.

January 24, 1978 - Meeting at Osgoode Hall Law School with the Ontario Sheet Metal and Air Handling Group. Representatives:

Mr. L. Cianfarani, Executive Director
Dr. G. Möller, Consultant Manager, Hamilton and District Sheet Metal Contractors Inc.
Mr. P. Murphy, Comstock International, Vice-President - Central Ontario Division
Mr. S. Broadfoot, President, J. A. Brownlee Limited

January 31, 1978 - Delivery of Report and Recommendations.

B. Nature of Proceedings

1. Because the Inquiry was not concerned with determining the rights of individuals in respect of a specific dispute but with examining complex policy alternatives in a specialized area of construction industry labour relations, and in view of the extent to which the issues had been previously the subject of public debate, I decided that public hearings were neither necessary nor desirable. It was a decision which resolved the practical difficulties of conducting such hearings in the time allotted, but the time considerations were not the determining factor.

2. Instead of public hearings, I met informally on an individual basis with organizations involved in the conduct of labour relations in the ICI and EPS sectors. I proceeded by attempting to identify, with the assistance of my technical advisers, those organizations who might be fairly considered the major protagonists in the debate concerning the separate existence of the EPS sector. I then invited those organizations to meet with me. I also issued, by notices to the construction industry at large (published on three occasions in the Daily Commercial News), a general invitation to anyone interested in the inquiry to meet with me or to make

written submissions to the inquiry.

3. I was interested in as frank and open a discussion as possible and to assist that process I gave to the participants in each meeting the undertaking that I would not subsequently attribute opinions, views or suggestions to any specific individuals or organizations without obtaining their prior consent.

4. As will appear from the chronology of the proceedings in paragraph A, I held twenty such meetings in which some fifty individuals and thirty-five separate organizations participated in one form or another, some on more than one occasion. I found the meetings to be extremely helpful. The discussions were frank and direct and they without exception produced the detailed information I needed about the present arrangements and how they worked and about the experience with those arrangements both positive and negative from the various different perspectives. As well, they provided me with an opportunity to explore at length with the people directly concerned their individual views as to how and why the present structure should be changed.

5. Having now completed the process, I have no reservations as to its adequacy or appropriateness.

C. Technical Advisers

1. My personal experience with construction industry labour relations had been always of a marginal nature and what there was, was no longer current. I therefore felt the need for some expert guidance in finding my way into the industry and in identifying with a degree of confidence, at least the major relevant components of the situation I had been asked to examine. Mr. Michael Eayrs and Mr. Norm Wilson, two highly experienced and knowledgeable practitioners in construction industry labour relation matters from the management and union perspectives respectively, acceded to my request to act together as technical advisers to the Commission.

2. Mr. Eayrs is Manager, Industrial Relations Construction Division, The SNC Group, member of the Construction Industry Review Panel, Chairman of the National Labour Relations Committee of the Canadian Construction Association and Director of CLRAO.

3. Mr. Wilson is Executive Director of the International Association of Bridge, Structural and Ornamental Ironworkers and member of the Construction Industry Review Panel.

4. As will be seen from the list of proceedings, I met on two occasions with Messrs Eayrs and Wilson. The meeting on November 17 was devoted to familiarizing me with the construction industry labour relations scene in general and to identifying for me the principal protagonists and sketching the broad outline of the ICI - EPS sector debate in particular. At the meeting on January 23, I sought a confidential discussion of some ideas that by then had begun to come into focus, for the purpose of testing them for comprehensiveness and practicality against experienced understanding and knowledge of the industry.

5. I am grateful to Mr. Eayrs and Mr. Wilson for their participation in this process which I found very helpful. And I must absolve them forthwith of any blame for the recommendations which this report contains, or for any aspect of the report for that matter. In their role as technical advisers I did not involve them in the development of the recommendation except as a sounding board on the one occasion mentioned nor did I seek their approval in respect of any matter. As of time of writing, I can only speculate as to their ultimate judgment on what appears in this report and I do not expect them to regard their role in these proceedings as imposing any restraint upon them in their forming that judgment or participating in the debates that are likely to follow.

D. Written Submissions Received During the Inquiry

1. I did not encourage written submissions as I felt the meetings were more than adequately serving my purpose and I had access, as well, to all of the written briefs filed with the Franks' Commission and with the Standing Resources Development Committee during its public hearings on Bill 22. I was more than pleased, however, to receive and consider written submissions and written submissions were received from the following organizations:

(a) Hamilton and District Sheet Metal Contractors Inc., December 19, 1977 with supplementary material filed December 30, 1977.

(b) Ontario Erectors Association, December 28, 1977.

(c) Local 793, International Union of Operating Engineers, January 3, 1978.

(d) Construction Labour Relations Association of Ontario, January 13, 1978.

(e) United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, January 17, 1978.

E. Other Resource Materials

1. The other reference sources to which I had recourse during the inquiry are as follows:

   (a) Ontario Hydro was, of course, the most important resource for information concerning the Electrical Power Systems Sector. They responded with unfailing good humour and efficiency to all of my requests for information and I am indebted to them for that co-operation.

   (b) The Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario, May 1976. ("The Franks' Commission Report").

   (c) Mr. D. E. Franks, the author of the foregoing report who kindly made his personal experience and insights available to me in the meetings that I had with him.

   (d) Bill 22 itself and the Commentary on Bill 22 prepared, I understand, for the assistance of the Legislature at the time the Bill was introduced.

   (e) Transcripts of the following meetings of the Standing Resources Development Committee:

   - October 5, 1977, Morning and Afternoon Sessions
   - October 6, 1977, Morning and Afternoon Sessions
   - October 17, 1977, Morning Session

   (f) The Hansard Report of the debate in the Legislature of Ontario on Bill 22 on Tuesday, October 25, 1977, No. 31, pages 1167 to 1179.

   (g) The written briefs filed with the Franks' Commission.

   (h) The written briefs filed with the Standing Resources Development Committee during that Committee's public hearings on Bill 22.

(i) The First Report of the Special Commission of Inquiry into British Columbia Construction October 1975 (the "Kinnaird Report").

(j) The Business Roundtable Construction Committee, Report of the Special Agreements Task Force, October 1977.

(k) Goldenberg, Crispo, Construction Labour Relations.

(l) Mills, Industrial Relations and Manpower in Construction.

2. My recourse to the experience in other jurisdictions was confined to the visit to the James Bay Employers Association on January 3, 1978. From that visit I concluded not only that the Quebec experience in respect of its electrical power construction program was not relevant to the Ontario problem - its labour relations traditions and present legislative environment being so radically different - but also that resort to the experience of other jurisdictions generally cannot be accomplished on the basis of a flying visit. To assess the relevancy and significance to Ontario's problems of solutions other jurisdictions have embraced would require a sophisticated understanding of the labour relations context in which those solutions were developed and are now to be found which it is impossible to achieve without a full study. Time did not permit such studies

Ontario

ONTARIO
MINISTRY
OF LABOUR

NOTICE
to the CONSTRUCTION INDUSTRY

The Electrical Power Systems Sector Inquiry

An inquiry under the Industrial Inquiry provisions of The Labour Relations Act is now under way concerning the possible application or extension of Bill 22 to the Electrical Power Systems Sector.

Written representations from interested people or organizations in the construction industry are invited.

Public hearings are not presently contemplated. The Commission, however, is interested in meeting with anyone who would welcome an opportunity to explore the issues directly. Appointments are invited for that purpose.

Meetings will be held in Toronto between now and January 13, 1978.

Meeting appointments may be made by contacting:
Mrs. Tobi Jaffe
963-0026

Deadline for written submissions:
January 15, 1978

Address for written submissions:
S. R. Ellis
Electrical Power Systems Sector
Inquiry Commission
c/o York University, Osgoode Hall Law School
4700 Keele Street, DOWNSVIEW, Ontario
M3J 2R5.

Dated at Toronto, December 13, 1977.

S. R. ELLIS,
Electrical Power Systems
Sector Inquiry Commission.

and their prospective value would not, in my opinion, have justified the extension of this Commission's reporting date. I, accordingly, resisted the occasional suggestions that I should talk to people in Manitoba, Alberta and British Columbia, and this report has been prepared without the benefit of such discussions.

APPENDIX C

MAJOR POWER PROJECTS

1977 - Total Construction Labour - Man-hours**

Projects	Total	Total Hydro	Total Cont.	Hydro EPSCA	Hydro Non-EPSCA	Cont. EPSCA	Cont. Non-EPSCA	Peak No's Hydro	Peak No's Cont.
1. Heavy Water	3.776	.176	3.600	.016	.160	1.800	1.800	185	3551
2. Bruce A & B	3.912	2.059	1.853	.887	1.172	1.506	.347	1412	806
3. Wesleyville	.248	.183	.066	.150	.033	.050	.016	349	106
4. Thunderbay	.231	NIL	.231	NIL	NIL	.103	.128	NIL	250
5. Lennox	.093	.078	.015	.041	.037	.015	NIL	80*	15*
6. Nanticoke	.798	.369	.431	.217	.152	.359	.072	400*	470*
7. Pickering B	1.750	1.480	.270	1.011	.469	.05	.22	1103	168
8. Darlington	.031	.017	.014	.014	.02	.014	NIL	41	34
9. Atikokan	.004	NIL	.004	NIL	NIL	.004	NIL	NIL	15
10. Miscellaneous	.144	.128	.016	.096	.032	.013	.003	197	15*
Totals	10.987	4.490	6.500	2.432	2.057	3.914	2.586	3767	5430

* estimated
**in millions of man-hours

APPENDIX D

EXPLANATION OF DIFFERENCES BETWEEN ICI AND EPSCA

TERMS AND CONDITIONS

1. In its estimate of the costs of changing over to the ICI Sector terms and conditions, Ontario Hydro identified the following areas of significant differences between the EPSCA terms and the ICI terms.[1]

   1. Warehousing and material handling
   2. Scaffolding
   3. Additional supervision
   4. Board allowance
   5. Travel allowance
   6. Shift allowance
   7. Height pay
   8. Industry funds
   9. Fabrication
   10. Union label
   11. Sub-contracting clauses
   12. Additional lost time - strike activity
   13. Increased administrative costs
   14. Increased non-uniformity of hours of work

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1. See page C.4-30

2. The extra cost of warehousing and material handling arises because under the EPSCA terms and conditions it has been possible to utilize a central warehouse staffed by members of the teamsters union. Typically in the ICI Sector each trade is entitled to handle their own materials so that a central warehouse is not possible and the members of the teamsters union are not commonly employed in the ICI industry, not at least in the capacity of central warehousemen. The estimated additional cost of adopting the ICI terms and conditions reflects the higher rates that would have to be paid to tradesmen assigned to the material handling function, the reduced efficiency with which the function could be organized and the extra facilities that would be needed.

3. The difference in the scaffolding area arises because of Ontario Hydro's present practice under the EPSCA terms and conditions of utilizing a composite crew of carpenters and labourers to build all of the scaffolding that is required on the project site. The standard practice in the ICI Sector on the other hand is that each trade builds its own scaffolding, uses it and then takes it away. Which means that the next trade with work to do in the same area will build new scaffolding

in the same area, etc.

4. The additional supervision required under ICI type agreements arises because of the restrictions typically found in those agreements concerning the limits of the ratio between crew-size and supervision. Under the EPSCA terms and conditions there are no provisions concerning the amount of supervision. The additional cost as estimated by Ontario Hydro reflects the added payroll costs of hiring the numbers of additional supervisors that would be required to give effect to the typical ICI Sector restrictions in this area. It also reflects the fact that under the ICI type terms and conditions, foremen must be members of the union, and on the basis of general construction industry experience with this arrangement as understood by Ontario Hydro, Hydro assumes that the reduction in the ability of the foremen to deal with disciplinary matters would require on a Bruce-size project an additional eight assistant superintendents (the first level of supervision that under the ICI Sector terms and conditions would not be in the union). The number of extra foremen that Ontario Hydro estimates would be required based on a calculation of the number of foremen that the ICI Sector agreements would specify given the crew sizes on a Bruce-size project as compared to

the actual number of foremen typically utilized by Ontario Hydro on such a project, is 25 additional foremen.

5. There are substantial differences in the way in which the entitlement to board allowance and the amount of board allowance is calculated as between the EPSCA terms and conditions and the typical ICI type agreement. Entitlement is determined by EPSCA on the basis of how many radius miles from the job site the tradesman lives whereas typically in the ICI Sector the entitlement is based on the number of radius miles from the location of the union hiring hall or sometimes the town hall in the city in which the union is located. Because the major power projects are always some substantial number of miles remote from the local union's location, the application of the ICI formula results in a much larger number of union members becoming entitled to the board allowance than is the case when the entitlement is calculated on the basis of distance from the job site.

6. As far as the amount of the board allowance is concerned,the rates payable vary substantially even within the ICI Sector from agreement to agreement but Ontario Hydro expects that the province-wide agreements negotiated in the ICI Sector will result in higher daily

amounts than what the EPSCA agreements call for. Furthermore, the numbers of days for which the allowance is paid also varies. EPSCA provides for payment for each day that is worked but some of the ICI Sector agreements will provide for the allowance to be paid on a seven-days-a-week basis.

7. Travel allowance is the allowance paid to tradesmen travelling from home to job site every day. Both in the ICI Sector and under EPSCA a tradesman who is not staying in the camp provided by the contractor has the choice between being paid board allowance or travel allowance. The great difference here between the ICI Sector's typical agreement and the EPSCA terms and conditions is that in the ICI sector the travel allowance is calculated on so many cents per mile from the union hall or city hall to the job site regardless of where the tradesman actually lives. EPSCA, on the other hand, pays a fixed amount per day worked that varies depending on the distance of the tradesman's residence from the job site. For example, a tradesman living more than 10 miles away and not more than 25 miles away will get $6.00 a day, those living in the 25 to 35 mile range will get $7.00 and those in the 35 to 50 mile range, $8.00 a day, etc. In the

Bruce projects the location of the union hiring halls is typically either Kitchener or London. It can be seen therefore that travelling allowance based on $.20 a mile for the distance from London or Kitchener to Bruce for everyone regardless of where they actually live is very likely to result in a substantially increased cost to the owner as compared to the EPSCA arrangement.

8. The extra cost for shift allowances simply reflects the difference between the amounts of shift premiums paid under the EPSCA agreement compared to the typical ICI agreement.

9. Height pay is an allowance payable to some of the trades in the ICI Sector. It's normally an hourly amount and is payable whenever the tradesmen is working a certain number of feet above the ground. Neither EPSCA nor Ontario Hydro have any height pay provisions in their agreements although they do provide a discomfort premium to some trades when the tradesman is working out of bosun chairs or swing stages.

10. Height pay provisions are not common in the ICI Sector. They are I am told typically found in the IBEW agree-

ments and in some of the United Association agreements. Ontario Hydro's estimate as to the additional cost to be expected from the height pay provisions is based on the assumption that the height pay provision would become standard in the province-wide ICI agreements for the trades of painters, ironworkers, carpenters and pipefitters.

11. Industry funds is the amount that each contractor pays to the contractors' association for each hour worked by an employee under the association's agreement. Neither Ontario Hydro nor any contractors working under EPSCA make any payments into the industry funds of any of the contractors associations and accordingly some additional cost will be encountered on this account.

12. Fabrication and union label clauses which are to be found in some of the ICI agreements and which do not appear in the EPSCA terms and conditions are clauses that entitle the union members to refuse to handle fabricated materials that have been manufactured off the construction site by non-union labour or by labour which is represented by non-construction industry unions. They apply generally where the work that is done off-site is the type of work which generally

falls within the tradesmen's usual skills.

13. The reference to additional lost time - strike activity, simply reflects Ontario Hydro's assessment that the incorporating of the major power projects in the ICI Sector will subject them to some significant additional amount of lost time through ICI Sector strike and lock-out activity.

14. The increased administrative costs to which Ontario Hydro refers is the extra labour relations staff that it estimates will be required in order for it to participate in each of the fourteen or so employer trade bargaining agencies that will be set up in the ICI Sector all of whom will be carrying on their negotiations at the same time.

15. The reference to increased non-uniformity of hours of work reflects the fact that EPSCA has been successful in standardizing on hours of work at least to the extent of achieving standard hours in respect of the first four days of the week, leaving the accommodation of the actual differences in the working hours for each trade to be accommodated on Friday of each week. This is not, I am told, available in the ICI Sector.

NOTE:
BARS INDICATE THE APPROXIMATE PERIOD FROM ONE YEAR BEFORE FIRST CONCRETE TO THE IN-SERVICE DATE OF FINAL UNIT IN GENERATING STATION

ontario hydro
generation projects division
generation services department

REV.	DATE	PARTICULARS	DRN.	APPD.

CONSOLIDATED
LONG RANGE PROGRAM
L.R.F. 48A

PREPARED	DRAWN	DATE	APPROVED
D. BROWN	G. SMALL	25 JULY 77	

DRWG. NO. 972-DCH-00300-0030 SHEET 1 OF 1 REV. 0

APPENDIX E

KF 3409 E5 E38 1978 c.1 OWTL
Ellis, S. Ronald (commissioner)
Electrical Power Systems Sector Inquiry
report

DATE DUE	BORROWER'S NAME

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